

## EXECUTIVE SUMMARY

The Task Force on Trial Court Employees (the task force) was statutorily created by the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) to make recommendations to the State Legislature for the establishment of a personnel system for the trial court employees of California. This interim report discusses the development of and the considerations behind the task force's preliminary recommendations for the various components of a personnel system for trial court employees that has "uniform statewide applicability."<sup>1</sup>

### Definition of Trial Court Employee

Although the Act (also commonly referred to as AB233) mandates that the task force design a new personnel system for trial court employees, nowhere in the statute is the term *trial court employee* defined. One of the first undertakings of the task force, therefore, was to establish a working definition of *trial court employee*. The task force's definition of this term can be found in **Part II** of this report, following the introduction (**Part I**).

### Employment Status

The Act also requires that the task force recommend an employment status for trial court employees: state, county, court, or other. Just as the statute does not define *trial court employee*, it does not define any of these four employment status options. Thus, the task force created working definitions of the various employment status options.

In defining the employment status options, the task force assumed that any trial court structure would have to be consistent with the judicial branch of government and independent of the executive and legislative branches. Likewise, the task force assumed that state employment would be something different from trial court employment, which, in turn, would be different from county employment. Consistent with the legislation, all of the status options emphasize local trial court management and assume a financing structure in which the state is the principal financial source.

The various employment status options as defined by the task force are discussed in **Part III** of this report. The task force has not yet made its final recommendation regarding trial court employees' employment status. The task force's recommendation will be included in the final report to be issued at the end of the year.

### Personnel System Components

Every government personnel system includes basic components such as

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<sup>1</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, § 77605(b).

classifications to describe job duties and minimum qualifications; salary guidelines to accompany those classifications; descriptions of employee protection policies (for example, at will, cause, and so on); benefit descriptions; and provisions for employee representation. The task force was charged with studying and making recommendations for these key personnel structure components. In making its preliminary recommendations, the task force concluded that broad definitions were most appropriate, as detailed recommendations would involve policy decisions outside the purview of the task force.

The task force has drafted recommendations for the following components of a new personnel structure for trial court employees: (1) classification, (2) salary, (3) meet and confer, (4) employment protection system, (5) accrued leave benefits, (6) benefits: group insurance and other employer-provided benefits, (7) federally regulated benefits, (8) deferred compensation, (9) defined-benefit retirement plan, (10) retiree group insurance benefits, and (11) transition issues. In formulating its recommendations, the task force examined the impact of each component in relation to the various employment status options. The task force's recommendations and supporting considerations for each of the personnel structure components can be found in **Part IV**.

### **Common Assumptions and Objectives**

Prior to formulating its recommendations for each component of the new personnel system for trial court employees, the task force identified working assumptions and objectives to serve as guidelines. Several of these assumptions and objectives are common to all of the recommended personnel component models. Common assumptions include:

- State funding levels will not significantly change as a result of the new personnel structure;
- The new trial court employee personnel system will not result in changes to federal law; and
- Existing state law may require changes as a result of implementation of the trial court personnel system.

Common objectives include:

- The level of benefits of trial court employees will not be reduced as a result of the implementation of the trial court personnel system;
- Achieve a system with local flexibility; and
- Achieve a system with statewide applicability.

**Advisory Vote**

The Act requires the task force to “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county”<sup>2</sup> to determine employees’ preferences in relation to the different employment status options of state, court, and county. In addition to assessing the preferences of trial court employees, the task force deemed it would be necessary to poll affected public entities, especially the trial courts and the counties. Under the statute, the courts, the counties, and the state must concur with any recommended employment status option that includes that entity. For example, the counties and the courts must concur if county employment status is recommended for trial court employees. Similarly, the courts and the state must concur if state employment status is recommended for trial court employees.

The task force originally planned to conduct the employee advisory vote and public entity poll itself, before issuing its final report. However, because of the volume and complexity of issues that needed to be resolved prior to the final report, the task force realized it could not finalize its decisions on these issues in time to complete the advisory vote and the public entity poll in advance of the final report scheduled for release in December 1999. In keeping with its legislative mandate, the task force will recommend to the Legislature a method for conducting the employee advisory vote and public entity poll. More detailed information regarding the employee advisory vote and public entity poll can be found in **Part V**.

**Trial Court Employee Survey and Related Documentation**

To make informed recommendations regarding the most appropriate personnel structure for trial court employees, the Act requires the task force to conduct a survey of personnel and benefits systems currently in place in the trial courts. The survey must obtain information on current trial court employees’ classifications, salaries, retirement benefits, health benefits, labor agreements, and other related data. **Part VI** of this interim report contains more specific information regarding the trial court employee survey. **Part VI** also discusses the task force’s duty to document existing statutory, constitutional, and other provisions related to classification, compensation, and benefits of trial court employees.

**Commenting on the Report**

The task force welcomes comments on this second interim report. All comments received by November 1, 1999, will be reviewed by the task force

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<sup>2</sup> *Idid*, § 77603(h).

prior to the writing of the final report. **Part VII** explains how to submit comments regarding the interim report.

### **General Conclusions**

While it is important to read each section of this second interim report to fully understand the task force's draft recommendations, some general assessments can be made regarding the task force's recommendations as a whole. In general, the task force tentatively recommends a new personnel system that:

- Achieves a system with local flexibility yet statewide applicability;
- Maintains employees' current classifications and salaries upon implementation;
- Does not reduce the level of benefits of trial court employees as a result of the implementation of the trial court personnel system;
- Includes discipline for cause and progressive discipline as part of all trial court employees' employment protection system, with certain exceptions (see Part IV.C, "Employment Protection System," for more detail);
- Does not alter the means by which memoranda of understanding or personnel policies, procedures, and plans related to trial court employees are modified; and
- Allows sufficient transition periods to implement the new system as smoothly as possible.

In summary, this interim report intends to inform the various interested individuals and entities as to the task force's tentative recommendations. This interim report also discusses considerations behind the task force's recommendations for a personnel structure for trial court employees with uniform statewide applicability.

## **PART I**

### **BACKGROUND AND INTRODUCTION**

This second interim report contains the findings and recommendations of the Task Force on Trial Court Employees regarding its work and recommendations to date with respect to the issues listed in Government Code section 77603. This report is being circulated for comment to the counties, the judiciary, the Legislature, the Governor, and local and state employee organizations. This second interim report is intended to outline the framework of the trial court employee personnel structure, provide information about the work of the task force, clarify the role of the task force, and provide interested parties an opportunity to comment before the task force prepares its final report.

The instructions for submitting comments regarding this second interim report are in Part VII. This second interim report also appears on the task force's Web site at <http://www2.courtinfo.ca.gov/tcemployees>. The final report of the task force is scheduled to be sent to the same parties by December 31, 1999.

#### **Background and Statutory Mandate**

For many years prior to 1997, trial courts sought an effective and stable financing system that would provide equal access to justice for all California citizens, regardless of the financial health of individual counties. On September 13, 1997, the California Legislature passed the Lockyer-Isenberg Trial Court Funding Act of 1997 (the Act) and established the state's primary responsibility for funding trial court operations. The Governor signed the bill into law on October 13, 1997.

The Act established a Task Force on Trial Court Employees to lay the foundation for a personnel structure for all trial courts of California. The task force is charged in the Act with "recommending an appropriate system of employment and governance for trial court employees."<sup>3</sup> To recommend a personnel structure for trial court employees, the task force is responsible for studying key personnel components, including such issues as employment status, classification, salary, health, retirement, and other benefits, bargaining procedures, and functions performed by counties for the courts.

The Legislature stated its intent to adopt a plan to transition all existing court employees to appropriate employment status, recognizing the state's assumption of trial court costs.<sup>4</sup> Under the new funding structure, trial court employees' employment status is not clearly defined. Many employees think they are county employees, many think they are court employees, and still others think they have

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<sup>3</sup> Gov. Code, § 77600.

<sup>4</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, § 3(g), (2).

become state employees. The Act states, “To consider providing courts in each county the option for employees to transition to the status of employees of the state, the local court or, with the concurrence of the county, continuation of the status as county employees . . .”<sup>5</sup>. A key element of the task force’s charge is to recommend to the Legislature an employment status for trial court employees, whether it be state, court, county, or other. The task force has not yet made its final recommendation regarding trial court employees’ employment status. The task force’s recommendation will be included in the final report to be issued at the end of the year. No matter what the eventual recommended employment status, the new trial court employee personnel system is to have uniform statewide applicability and promote organizational and operational flexibility.<sup>6</sup>

### **Task Force Membership**

The Act created an 18-member task force and specified the terms of its membership. As indicated specifically by the Act,<sup>7</sup> the membership is as follows:

- Four representatives of the trial courts, appointed by the Chief Justice, representing two urban, one suburban, and one rural court;
- Four representatives of counties, appointed by the Governor from a list of nominees submitted by the California State Association of Counties;
- Three representatives appointed by the Senate, of which two represent trial court employee organizations;
- Three representatives appointed by the Speaker of the Assembly, of which two represent trial court employee organizations;
- The Director of the Department of Personnel Administration, or a designee;
- The Chief Executive Officer of CalPERS, or a designee;
- The Director of Finance, or a designee; and
- An appellate court justice to serve as a nonvoting chair.

The Judicial Council of California, Administrative Office of the Courts (AOC), is designated in the Act to provide staff support to the task force.<sup>8</sup> The Judicial Council of California, chaired by the Chief Justice, is a constitutionally created body that provides policy direction to the courts. The Judicial Council also acts in conjunction with the Governor and state Legislature on legislation regarding court practices, administration, and procedures. The AOC is the staff agency for the Judicial Council and provides staff support to the task force. The California State Association of Counties and the Legislative Analyst have provided additional staff support to the task force.<sup>9</sup>

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<sup>5</sup> Gov. Code, § 3 (g) (3)

<sup>6</sup> Gov. Code, § 77605(b).

<sup>7</sup> Gov. Code, § 77601(a), (h).

<sup>8</sup> Gov. Code, § 77602.

<sup>9</sup> *Ibid.*, Gov. Code, § 77602.

**Task Force Duties**

The Act mandates that the task force perform the following duties:<sup>10</sup>

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine the costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;
- Document existing constitutional, statutory, and other provisions relating to the classification, compensation, and benefits of court employees;
- Identify functions relating to trial courts that are provided by county employees;<sup>11</sup>
- Examine and outline issues relating to various options for employment status (county, court, state, and other);
- Prepare a method for submitting the issue of employment status to an advisory vote of trial court employees; and
- Recommend a personnel structure for trial court employees.

To fulfill its charge, the task force has considered the variation in and diversity of personnel systems in California trial court systems, including differences in retirement systems, benefits, status, and local personnel issues. In making its recommendations, the task force has taken into consideration the needs of the entire court system, including 226 municipal court judges, 1,254 superior court judges, and approximately 18,000 court employees in 98 courts in 58 counties, each court system having a different classification system, different salaries, different benefits, different retirement systems, and different memoranda of understanding.

A major objective of the task force has been to minimize the disruption of the trial court workforce and protect rights accrued by employees under their current systems. The legislative intent that no provision of the Act should reduce the salaries or benefits of trial court employees has been a guiding principle in shaping the recommendations of the task force.<sup>12</sup>

**Judicial Council Duties**

The Act specifies that the Judicial Council, after giving consideration and due weight to the report of the task force, submit findings and recommendations to

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<sup>10</sup> Gov. Code, §§ 77603(a), (i).

<sup>11</sup> The task force interprets the Act to mean county employees who are not court employees.

<sup>12</sup> Lockyer-Isenberg Trial Court Funding Act of 1997, §§ 3(g), (1).

establish a system of uniform court employee classifications, which may provide for local flexibility.<sup>13</sup> After considering the recommendations of the task force, the Judicial Council will create broad classifications that provide courts and employees with maximum flexibility.

### **General Assumptions**

The task force has interpreted the Act to mean that it must create a broad policy framework for the trial court personnel system, while refraining from entering into local administrative decisions, state budgetary decisions, and recommendations regarding individual employees. Although not specified in the Act, the task force operated under the following general assumptions:

- Task force actions and recommendations apply only to employees who meet the task force definition of trial court employee. It is not within the purview of the task force to submit recommendations regarding non-trial court employees.
- The survey of trial court employees should collect data about benefits because benefits are a basic tenet of any personnel structure. The Act specifies the intent that trial court employees' salaries and benefits should not be reduced as a result of the Act;<sup>14</sup> therefore, an accounting of current benefits must be completed and analyzed.
- State funding contribution levels should not significantly increase as a result of the trial court personnel structure.
- The State of California will not delegate its authority to set budgetary levels for the courts. The task force agreed that any budgetary increases must be approved through the state budget process, and such matters are not within the scope of the task force's mandate.
- It is not within the legislative mandate of the task force to make recommendations regarding items that involve specific state budgetary actions, including the number of employees needed.
- Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997. County funding obligations (County General Fund Base Amount) for trial court operations are capped at fiscal year 1994–1995 levels, reduced, or no longer required.<sup>15</sup>
- The judicial branch is independent from the personnel systems governing employees of the executive and legislative branches of state and local government. When forming recommendations for the development of a trial court employee personnel structure, task force discussions were conducted within the context of the separation of powers doctrine.
- The implementation of the trial court employee personnel system shall not

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<sup>13</sup> Gov. Code, § 77605(a).

<sup>14</sup> *Ibid*, Gov. Code, § 77605(a).

<sup>15</sup> Gov. Code, §§ 77200–77201.



reduce the retirement or other benefits, or contribution levels, of current trial court employees.

- The trial courts will operate under a decentralized system of trial court management, which ensures local authority and responsibility of trial courts to manage day-to-day operations.<sup>16</sup> The task force developed its policy recommendations consistent with the concept in the Act that trial courts will retain local management and operational control.
- Current personnel systems vary substantially among trial courts; these variations can continue to exist under the new system. The task force determined that a “one size fits all” structure would not be effective and instead fashioned uniform broad policies that trial courts can operate within.
- Statutory changes will be required as a result of the implementation of the trial court personnel system; federal and constitutional changes are not anticipated.

### **Timeline and Schedule**

The Act specified the time frame for the work of the task force.<sup>17</sup> Although the Act legislated that the task force members be appointed by October 1, 1997, and begin their work prior to January 1, 1998, all appointments were not completed until late May 1998. The task force therefore held its first meeting in June 1998.

The task force staff requested from the President Pro Tempore of the Senate and the Speaker of the Assembly a revised schedule for the completion of the interim and final reports. This revised schedule projected that the task force would submit its final report by September 3, 1999, and that the Judicial Council would submit its classification findings and recommendations to the Legislature by January 1, 2000.<sup>18</sup>

The task force’s first interim report, issued in May 1999, reflected the work of the task force up to that date. By May, however, the task force had not yet completed its draft recommendations for several components of the new personnel system. Many of those who commented on the first report stated that they would like an opportunity to comment on the *entire* set of recommendations. Therefore, the task force decided to distribute this second interim report prior to issuing its final recommendations. The decision to publish a second interim report triggered a third extension to the task force’s timeline. The legislated and two revised timelines for the task force work are presented here.

### ***Timelines***

Legislated    1<sup>st</sup> Revision    2<sup>nd</sup> Revision

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<sup>16</sup> Gov. Code, § 77001(a).

<sup>17</sup> Gov. Code, §§ 77604(c), (d), and 77605(a), (b).

<sup>18</sup> Gov. Code, § 77005(a). “These classifications shall include duty statements, minimum qualifications, and salary ranges.”

10-01-97	05-07-98	05-07-98	Task Force Appointed
01-01-98	06-04-98	06-04-98	Task Force Has Met and Established Operating Procedures
01-30-99	05-07-99	05-07-99	Task Force Submits Interim Report
N/A	N/A	10-31-99	Task Force Submits Second Interim Report
06-01-99	09-03-99	12-31-99	Task Force Submits Final Report
01-01-00	01-01-00	01-31-00	Judicial Council Submits Classification Findings and Recommendations to the Legislature

**Continuing Work of the Task Force**

To meet its end-of-year timeline for issuing its final recommendations, the task force went forward with the distribution of this second interim report in October 1999, despite the fact that a few issues remained to be resolved. In the interval between the issuing of this second interim report and the final report, the task force will continue working on these unresolved issues, including:

- Determining recommended employment status (state, court, county, or other);
- Questions of governance; and
- Miscellaneous transition issues (see Part IV.J for details).

Before writing its final report, the task force will consider comments received regarding this second interim report. Using these comments as a basis for changes it deems appropriate, the task force will make modifications to the recommendations contained in the second interim report. The final report will also contain the task force's recommendations for trial court employees' employment status.

The task force intends to submit its final report, with recommendations for a personnel structure, to the Governor, the Legislature, the judiciary, the counties, and local and state employee organizations by December 31, 1999. During the first quarter of 2000, the task force will meet as needed to review draft legislation prior to its submission to the Legislature.

**Meeting Process and Communication**

As specified by the statute, the Task Force on Trial Court Employees comprises members from across the state who represent the interests of key stakeholder groups. As indicated earlier in this introduction, this diverse group includes representatives from the trial courts (judges, administrators, and labor representatives), the counties, the Department of Finance, the Department of Personnel Administration, and the Public Employees Retirement System.

Given the diverse interests represented by the task force members, the group needed to establish a meeting structure that allowed all members an opportunity to voice their different perspectives. The meeting structure also needed to ensure that no one faction dominated the outcome of group decisions. Additionally, it was important that the wide range of constituents represented by task force members be kept apprised of the group's ongoing work. To this end, the task force established several channels of communication to give constituents as much information and access to the task force's work as possible. Following are more detailed descriptions of the task force's meeting processes and methods of communicating with its public.

**Meeting Process**

To accomplish its charge, the task force has held monthly meetings. As previously mentioned, the group required a meeting process that ensured that the various needs of the diverse representatives were taken into account. To meet these needs, the task force adopted several consensus-based governance procedures. Most notable are two key decision-making processes, described here.

***Decision-Making During Meetings***

As the need to reach a decision arose during a task force meeting, the group followed the process outlined here:

- First, determine whether there is consensus on the issue.
- If there is not full consensus among group members, discussion continues until the group:
  - Reaches consensus; or
  - Concludes that further discussion will not produce consensus.
- The group may decide that further research is needed before members can reach a decision on that particular issue. Following further research, the new information is shared with the group, and once again there is an attempt to reach consensus.
- If, after further discussion, still no consensus can be reached, the default process is majority vote.

***Decision-Making Outside of the Meetings***

Occasionally, logistics required that the task force move forward with certain decisions in between monthly meetings. To ensure that a consensus-based approach was maintained outside of the meetings, the following model was adopted by the group:

- Members are notified of a proposed decision or course of action.
- Members are then asked to respond by a specific date.

- If there are no objections or counterproposals, the decision is made or the action is taken.
- Minor changes are incorporated as appropriate, but major objections are brought to the entire group.

Over the course of close to 20 meetings and many decisions, the task force consistently managed to reach consensus on almost all issues. In fact, the task force's substantive recommendations have all been adopted without dissent with one exception, where there was one dissenting vote.

### **Communication with the Public**

From the beginning, the members of the task force have been extremely cognizant of the fact that their actions and final decisions will have an impact on many constituent groups, especially the approximately 18,000 trial court employees. The task force has, therefore, striven to establish ongoing communication with its audience by establishing several channels of communication, described here.

#### ***Public Comment***

Each month, the task force met in a different location around the state to allow interested parties an opportunity to present their perspectives to the task force. At the beginning of each monthly meeting, 30 minutes were dedicated to public comment. Any interested party who wanted to address the task force could do so. If this designated time slot was not convenient, a member of the public could request an alternative time by contacting task force staff prior to the upcoming meeting.

#### ***Public Meetings***

Any member of the public was welcome to observe the monthly task force meetings. As mentioned under "Public Comment," the task force met at various locations around the state. The meetings gave interested parties from a wide geographic range access to the work of the task force.

#### ***Court and County Visits by the Chair and Staff Project Leader***

Upon request, the chair of the task force, Justice James A. Ardaiz, and the staff project leader of the task force, Ms. Judith A. Myers, met with specific courts or groups of court employees to address questions regarding the work of the task force. Justice Ardaiz and Ms. Myers met with numerous groups of court employees, court administrators, and presiding judges across the state. They also made presentations to the Task Force on Trial Court Facilities, Mid-Level Court Management Conference, California Judicial Administrators Conference, and other interested groups.

#### ***Web Site***

Since August 1998, the task force has maintained a Web site designed for public access. Upon its creation, an announcement about the Web site was sent to all court administrators, encouraging them to distribute the announcement to their employees. The task force Web site contains general background information about the task force. The Web site also includes meeting minutes and draft working documents approved by the task force. The Web site address is <http://www2.courtinfo.ca.gov/tcemployees>.

***E-Mail***

Members of the public are welcome to address questions and comments to the task force via e-mail. Task force staff distributes these questions and comments to all members of the task force. Although individual responses from the task force are not logistically feasible, the staff does post typical responses to frequently asked questions on the Web site. The e-mail address is [tcemployees@courtinfo.ca.gov](mailto:tcemployees@courtinfo.ca.gov).

## **PART II**

### **DEFINITION OF TRIAL COURT EMPLOYEE**

#### **Background**

Early in the process, the Task Force on Trial Court Employees determined that it would need to develop a definition of a trial court employee to clarify to whom the new personnel system recommended by the task force would apply. Specifically, the task force needed to determine:

- Who are the employees of the trial court who will be included in the classification, benefit, and salary systems established by the Legislature?
- When a decision is made regarding the status of trial court employees, who will that decision affect?

The task force also recognized that a definition would be necessary both to assist the courts and counties in identifying who should be included in the survey of trial court employees and to identify who should participate in an advisory vote of trial court employees.

The task force first received education on the legal definitions of an employment relationship and the control tests used by various agencies to differentiate between employees and independent contractors.

The task force decided that it should not identify court employees by the function performed because a function performed in one court by a court employee might, in another court, be performed by a county employee and, in another, by an independent contractor. The task force does not intend to change the status of any individual performing a function or service for the court. Only those employees who meet the definition of a trial court employee will be covered by the new personnel system. The definition of a trial court employee adopted by the task force focuses on individuals who meet two specific tests of an employment relationship: (1) those individuals who are included in the court's budget, and (2) those individuals whose manner and means of work are within the control of the court.

#### **Survey Definition of Trial Court Employee**

The task force initially developed a definition of a trial court employee for the purposes of the survey to be conducted of all trial court employees. The definition was needed to inform the courts and counties completing the survey about whom they should provide data. The task force decided to be more inclusive than might ultimately be necessary to ensure that the survey would collect the necessary data without the need to return to seek more information from the courts and counties.

The definition used for the purposes of the survey is presented here.

<b>Survey Definition of Trial Court Employee</b>
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**Definition:**

If questions (A) and (B) are both answered yes, the individual is a court employee for the purposes of this survey. If either question (A) or (B) is answered no, the individual is not a court employee for the purposes of this survey.

- A. Is the individual paid from the court's budget,<sup>19</sup> regardless of funding source?
- B. Does the court<sup>20</sup> have the right to control the manner and means of the individual's work?

For purposes of this survey, the court's right to control the manner and means of the individual's work means that the court has the authority to hire, supervise,<sup>21</sup> discipline,<sup>22</sup> and terminate the individual. The court's authority to hire, supervise, discipline, and terminate the individual need not be exclusive and may be shared with other entities, including county personnel offices and agencies with statutory or licensing authority.

This definition excludes: (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

This definition includes subordinate judicial officers (e.g., pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639).

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<sup>19</sup> For purposes of this survey, *court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. Includes local revenue, all grants, and trial court operations funds (Trial Court Funding Act, AB 233, Gov. Code, § 77009(b)).

<sup>20</sup> For purposes of this survey, *court* includes judges in their individual or collective capacity, or their appointees, who are vested with the authority to hire, supervise, discipline, and terminate.

<sup>21</sup> For purposes of this survey, *supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.

<sup>22</sup> For purposes of this survey, *discipline* is defined as a procedure such as reprimand, demotion, suspension, or reduction in pay that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

If the definition on the preceding page excludes the functions or groups listed below, the survey collected the following information from the court administrator, if available, on titles, duties, rate of pay, qualifications, and group benefits:

- Court security officers (including retirement information on this group);
- Court interpreters;
- Court reporters; and
- Electronic recording monitors.

**Development of Final Definition of Trial Court Employee**

The initial definition was developed for use only in the survey. The survey requested data on individuals performing certain functions for the court to provide the task force with as much information as possible about traditional court functions such as court reporting and court security. However, some of the individuals included in the survey did not meet the control test that defines an employment relationship because they are independent contractors or employees of another entity. Therefore, the task force reviewed and narrowed the definition of trial court employees to include only those individuals who are truly employees of the court and not independent contractors or employees of another entity. Only individuals who meet the definition of a trial court employee will participate in the advisory vote (see Part V). The new personnel system adopted by the Legislature will apply only to employees described by this definition.



**Final Definition of Trial Court Employee****Definition:**

An individual is a trial court employee if:

- A. The individual is paid from the court's budget, regardless of the funding source; and
- B. The court has the right to control the manner and means of the individual's work, which means that the court has the authority to hire, supervise, discipline, and terminate the individual.<sup>23</sup>

If both (A) and (B) are true, the individual is a trial court employee regardless of classification or whether or not the function performed is identified in rule 810 of the California Rules of Court. If either statement (A) or (B) is not true, the individual is not a trial court employee.

**Specific Inclusions and Exclusions:**

This definition includes those subordinate judicial officers, that is, commissioners and referees, who meet this definition.

This definition excludes: (a) temporary employees hired through agencies; (b) jurors; (c) individuals hired by the court pursuant to an independent contractor agreement; (d) individuals for whom the county or court reports income to the Internal Revenue Service on a Form 1099 (rather than a form W-2) and therefore does not withhold employment taxes; and (e) judges, either elected or appointed.

**Definitions of Terms:**

- *Court's budget* is defined as funds from which the presiding judge of the court, or his or her designee, authorizes and directs expenditures. These funds include local revenues, all grants, and trial court operations funds (Lockyer-Isenberg Trial Court Funding Act of 1997, Government Code section 77009(b)).
- *Court* is defined as judges, or their appointees, who are vested with or delegated the authority to hire, supervise, discipline, and terminate.
- *Supervise* is defined as the authority to plan, direct, control, and evaluate the work of an employee.

<sup>23</sup> The court's process and procedure for hiring, supervising, disciplining, and terminating the individual may involve other entities, including county personnel offices and agencies with statutory or licensing authority.

- *Discipline* is defined as a procedure such as a reprimand, demotion, suspension, reduction in pay, or termination that corrects or punishes a subordinate's behavior, such as behavior that results in poor work performance, low productivity, or violation of agency rules or regulations.

**Considerations: Final Definition of Trial Court Employee**

Since the task force is not defining court employees based on function performed but by employment relationship, there are classes of individuals who perform services for the court who may or may not be court employees under this definition. For example, in some courts, court reporters or court interpreters may be court employees; in others, they may be independent contractors. The task force recognizes that employment relationships may change, and that functions currently performed by independent contractors may be performed by employees in the future. The task force is neither recommending nor precluding future changes in employment relationships.

## PART III

### DEFINITIONS OF EMPLOYMENT STATUS OPTIONS: STATE, COUNTY, COURT, AND OTHER

#### Background

The Act specified that the duties of the Task Force on Trial Court Employees include the examination and outlining of issues relating to the establishment of a local personnel structure for trial court employees under:

- Court employment;
- County employment, with the concurrence of the county and the courts in the county;
- State employment, with the concurrence of the state and the courts in the county; or
- Other options identified by the task force.<sup>24</sup>

The Act did not define these status options. For example, it did not define whether court employment meant a single trial court employer or 58 independent trial court employers. It did not define whether state employment meant state judicial branch employment or some other form of state employment, such as employment in the executive branch, the California State University system, or the University of California system.

Since the legislation specified that the task force could consider state, county, and court status options, the task force concluded that these status options should be clearly different.

#### Employment Status Definitions

The definitions of state, county, and court employment describe the employment status, hire and fire authority, and meet and confer processes, as well as the final authority for determination of economic and noneconomic benefits under the state, county, and court employment options. Under each employment status definition, the term *state supported* means financially supported by the state. The task force used these definitions to design personnel system models that would apply under each status option.

State employment is defined by the task force as state judicial branch employment as opposed to some other type of state employment, since the trial courts are part of the judicial branch of government and subject to the California Rules of Court adopted by the Judicial Council. This employment status definition is not part of the existing state judicial branch but rather describes a separate state trial court system, with independent local management and local labor relations.

County employment is defined as employment in a state-supported county personnel

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<sup>24</sup> Gov. Code, § 77603(g).

structure in which employees are part of the county personnel system. This employment status may have existed in some courts prior to the passage of the Act, with the exception of the change to state responsibility for the financing of court operations. The county employment status option does not necessarily include all elements of what is normally considered county employment status. This is because such a county model would conflict with the Trial Court Funding Act's emphasis on local court financial control and local court management as well as trial court labor relations laws and rules.

Court employment is defined as employment in an independent court structure separate from the state and the county. This employment status definition results in an independent court that is responsible for developing its own personnel policies and procedures but that has the option to establish policy, salary, and benefit structures comparable to its county's system, subject to meet and confer, where applicable.

At this point, the task force has not identified an "other" status option. However, the task force will reconsider this issue once comments on this second interim report are reviewed and the survey results are analyzed. It is the intention of the task force, after receipt of all comments, to review the status options and consider a recommendation that seeks to accommodate the intent of each model as well as the intent of AB233. Therefore, the task force welcomes comments directed at the different status definitions specifically noting any inconsistencies between the models and the ability of the models to operate as intended within the different status definitions. The final recommendation of the task force may reflect a status option that is a combination of the current status definitions.

The task force developed a matrix to display its definition of each employment status option. (See Exhibit III-1, which follows.)

## PART IV

### COMPONENTS OF A PERSONNEL SYSTEM: THE RECOMMENDED MODELS

#### General Background of Recommended Models

The Act charged the Task Force on Trial Court Employees with recommending a personnel structure for trial court employees. However, it did not define the term *personnel structure*, leaving the task force to determine what might be included within that term.

In defining what the Legislature intended by the term *personnel structure*, the task force considered the duties assigned to it by the Act. The Act specifies that the task force is to survey and document seven components of a personnel structure: court employee status, classification, salary, retirement systems, benefits, terms and conditions of employment, and labor relations.<sup>25</sup> In some cases, the task force broke these seven components into subcomponents, particularly for complex topics. For example, the task force divided retirement systems into defined-benefit retirement, deferred compensation plan benefits, and retiree group insurance benefits.

The task force decided that its recommendations for a new personnel structure should cover the following topics:

1. Classification;
2. Salary;
3. Meet and confer;
4. Employment protection system;
5. Accrued leave benefits;
6. Benefits: group insurance and other employer-provided benefits;
7. Federally regulated benefits;
8. Deferred compensation;
9. Defined-benefit retirement plan;
10. Retiree group insurance benefits; and
11. Transition issues.

The task force developed models for each of these topics, which are discussed in detail in this part of the second interim report. Each model includes a set of recommendations regarding a particular personnel structure component. These models were designed to be applicable regardless of the ultimate employment status of court employees. All models apply to both represented and unrepresented employees, unless specified otherwise.

As mentioned earlier in this report, under the new funding structure, trial court employees' employment status is not clearly defined. The task force will recommend an employment

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<sup>25</sup> Gov. Code, § 77603.

status for trial court employees in its final report. Traditionally, trial court employees have received benefits from the counties. Therefore, in the benefits models that follow, when the task force refers to a “successor” employer, this means a change from the county to an entity other than the county as the provider of those benefits.

In developing each model, the task force followed a similar procedure. Before beginning work on the model, the task force identified and discussed any issues relating to the topic. The task force also often received education about the specific topic. Next, the task force identified assumptions or principles underlying the topic that might guide the model development. The task force articulated its objectives or basic approaches in designing the model before creating the model.

Each model required at least three months to complete, from issue identification to final adoption of the model. Once each model was adopted, it was posted on the Web site. The task force then tested the models against the various working status-option definitions (state, county, and court) to identify any issues that needed further examination and to consider the impact of the models under each employment status option.

The development and substance of each model adopted by the task force to date, as well as the consequences of each model under each employment status option, are discussed in this part of the interim report.

## A. Classification and Salary

### Background

The Act charges the Judicial Council with submitting “findings and recommendations to the Legislature for the establishment of a system of uniform court employee classification, which may provide for local flexibility.”<sup>26</sup> Classification is the grouping of jobs sufficiently alike with respect to their duties and qualifications to justify their being covered by a single job title and salary. Job classifications are identified for the purpose of establishing salary ranges. The classifications recommended by the Judicial Council “shall include duty statements, minimum qualifications, and salary ranges. The classifications shall be broad enough so that the employees and their managers have maximum flexibility to accommodate the needs of the courts and the employees.”<sup>27</sup>

Although the task force is not specifically charged with making recommendations concerning classification or salary, its members concluded that because classification and salary are integral to any personnel system, a broad policy recommendation to the Judicial Council on these issues should be made. The task force will make a recommendation to the Judicial Council on classifications and salaries and provide information collected from the Trial Court Employee Survey. The Judicial Council will use this data on trial court employees when formulating its recommendations to the Legislature for a system of uniform court employee classifications and salary ranges.

### Education: Classification and Salary

Task force members were provided the following education concerning classification and salary:

- An overview of the California trial court system, describing the classification differences and similarities among the trial courts based on the size of the court.
- A presentation on basic classification and compensation concepts, including common terms used in the classification process, such as job family, job series, job classification, employee, and position. Information was also provided on the importance of job classification as a tool in public personnel management and its use as the foundation for other personnel processes, such as recruitment, selection, training, performance management, and discipline.
- Basic information concerning the relationship of classification to salary, including:
  - Grouping similar jobs that perform similar work with nearly the same level of difficulty into job families;
  - Creating classifications, equal or comparable in value to the organization, within these job families; and
  - Grouping jobs into classifications for the purpose of establishing salary rates.

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<sup>26</sup> Gov. Code, § 77605(a).

<sup>27</sup> *Ibid.*

- Information on various classification and compensation policies and issues, including information about:
  - Specific classification plans;
  - Generic classification plans;
  - Market placement policies; and
  - Factors that may complicate classification and compensation policies.
- A presentation on the personnel structure of the University of California and California State University at both the systemwide and local campus levels, including in-depth information about classification and compensation in these decentralized personnel systems.
- A presentation on the basic personnel structure components of the executive and judicial branches of state government.
- A presentation on the background and current use of the *Trial Court Model Classification Manual*, adopted for use by the trial courts in August 1996.

**Assumptions and Objectives: Classification and Salary**

The task force used the following assumptions and objectives in developing recommended models for classification and salary:

***Assumptions and Objectives:***

1. The state will not delegate its authority to set the budget level for the courts.
2. Counties are not obligated to cover court operating costs under the Lockyer-Isenberg Trial Court Funding Act of 1997.
3. State funding levels will not significantly change as a result of the new personnel structure.
4. Current personnel systems contain substantial variations among counties and courts. These variations may continue to exist under the new system.
5. “. . . The Judicial Council shall submit findings and recommendations to the Legislature relative to the establishment of a system of uniform court employee classifications, which may provide for local flexibility. These classifications shall include duty statements, minimum qualifications and salary ranges. The classifications shall be broad enough so that the employees and their managers have maximum flexibility to accommodate the needs of the courts and the employees.”<sup>28</sup>

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<sup>28</sup> *Ibid*; Cal. Rules of Court, rule 810.



<b>Recommended Classification Model</b>
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The task force recommends that the Judicial Council:

- I. Create a uniform statewide trial court classification system (uniform classification system) of broad classifications that covers all jobs performed in courts, using the *Trial Court Model Classification Manual* as a starting point and avoiding “other” as a classification.
- II. Establish the uniform classification system as a common classification language for all trial courts, allowing each court to:
  - A. Continue to use its own existing classification titles;
  - B. Determine the appropriate classification for each local court position within the uniform classification system; and
  - C. Establish new local classification titles.
- III. Require that the assignment of a position to a uniform classification by the court be based on duties performed.
- IV. Provide descriptions of:
  - A. Overall general principles and guidelines for establishing minimum qualifications for all classifications by individual courts; and
  - B. Commonly recognized minimum qualifications for individual broad classifications.
- V. Establish a process for maintaining, periodically reviewing, updating, and creating additional broad classifications within the uniform classification system to reflect changes in local court classification plans.

**Considerations: Classification**

The task force used the classification and salary assumptions in developing its broad recommendations to the Judicial Council for the development of a statewide trial court classification system (uniform classification system). The task force was cognizant of the legislative intent of the Act to maintain local flexibility and accommodate the needs of the courts and employees. The model is designed to allow courts to maintain local authority. The classification model created by the task force meets the mandate of the Act.

To meet the required objective of a personnel system that would have uniform statewide applicability and promote organizational and operational flexibility,<sup>29</sup> the task force determined that a common language would be required to create a uniform statewide trial court classification system of broad classifications that cover all jobs performed in the trial courts. The *Trial Court Model Classification Manual* is recommended as a starting point for the creation of this common language. The uniform classification system will serve as a common language for classification discussions statewide among courts, the Judicial Council, and the executive and legislative branches and will ensure consistency for budgeting and other operational purposes.

The model allows the trial courts to continue to establish and use their own existing classification titles within the broad classifications in the uniform classification system. Each local court will be responsible for determining the appropriate classification for each position within the uniform classification system.

To ensure that trial court positions are appropriately classified, the task force included in its model a requirement that the assignment of a classification within the uniform classification system reflect the actual duties performed by the trial court employee, not merely the title of the classification held. For example, if a position classified as Deputy Clerk at the local level is assigned to perform technical accounting tasks, the trial court should classify this position under the broad classification system as Account Technician, a classification more reflective of the actual duties performed by the employee. Deputy Clerk would continue to be the term used by the local trial court. Account Technician would be the cross-referenced term used in the uniform classification system.

The concept of a uniform statewide trial court classification system can be further illustrated as follows:

The job titles for positions that perform similar duties might include the following job titles at the local level:

- Deputy Court Clerk;
- Superior Court Clerk; and

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<sup>29</sup> Gov. Code, § 77605(b).

- Courtroom Clerk.

These positions might then be described under a broad common-language classification title such as Courtroom Clerk, which would represent one of the uniform classifications within the uniform classification system recommended by the Judicial Council. Courts would use the uniform classification title of Courtroom Clerk to describe their positions that have similar duties. The individual trial courts could continue to use their existing classification titles for local purposes. However, the uniform classification title of Courtroom Clerk would become the term used for discussion regarding classification between courts and the Judicial Council. This common classification language would ensure consistency for budgeting purposes and communication with other state entities.

The task force recommends that the Judicial Council develop a method for periodically reviewing, revising, updating, and maintaining the broad classification within the uniform classification system to reflect changes in local court classification plans. If a trial court creates a new classification that is not covered in the uniform classification system, the Judicial Council will be responsible for revising or creating a new classification to update the uniform classification system.

The Judicial Council would be responsible for recording or documenting the classifications within each local trial court after the courts make a change in their classification plans. The task force concurred that the Judicial Council is the appropriate entity to develop procedures and processes for maintaining, reviewing, updating, and creating additional broad model classifications to reflect changes in the specific classifications made by trial courts.

**Impact for Employment Status Options: Classification**

The recommended classification model would essentially work the same under any of the employment status options of state, court, and county, and the impact of the model under each of the status options is generally the same. Under each employment status option, the local trial court would be responsible for classifying positions and allocating them to the broad common-language classification.

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**Recommended Salary Model**

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The task force recommends that the Judicial Council:

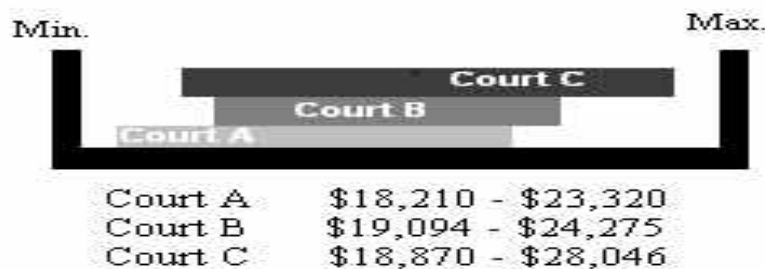
- I. Establish a salary system that allows individual trial courts to establish their own salary ranges based on the local market and other local compensation-related issues such as difficulty of recruitment or retention.
- II. Document existing local salary ranges contained in each uniform classification to create a broad salary register for each uniform statewide trial court classification. The minimum and maximum of the salary register for each uniform classification will be the minimum of the lowest local salary range and the maximum of the highest local salary range. The salary register for each uniform classification reflects actual salaries and does not set them.
- III. Document the local salary ranges that exist at the time of transition to the new trial court personnel system; future local salary range adjustments are subject to local personnel policies, procedures, and plans or meet and confer, where applicable.
- IV. Establish a process for maintaining, reviewing, and updating the broad salary registers to reflect changes in local salary ranges.

**Considerations: Salary**

The recommended salary model is compatible with the assumption that state funding levels will not significantly change as a result of the new personnel structure. The model also meets the intent of the Legislature that no employee in the trial court system shall sustain a salary reduction as a result of the new personnel structure. The recommended salary model creates a system of decentralized management and does not reduce salaries or require substantial cost increases. In keeping with the intent not to reduce the salary of a trial court employee, all court employees will enter the new personnel system with their existing salaries at the time of transition.

The model creates a salary system by documenting a broad salary register for each uniform classification within the uniform classification system. This is accomplished by documenting the existing local salary ranges of each classification within each local trial court. The current individual local trial court's salary ranges for each of the classifications would be incorporated into the salary register. The minimum and maximum of the salary register for each uniform classification will be the documented minimum of the lowest local salary range and the documented maximum of the highest local salary range. The salary register for each uniform classification reflects actual salaries and does not set them. The composite of current employees' salary ranges in each uniform classification creates the salary register for that classification and reflects existing salaries for that uniform classification.

It is possible that within the broad salary register, the individual trial court ranges may overlap. An example illustrating this point is shown here:

**Courtroom Clerk Salary Register**

As shown in the example, the model allows the current salary range for each individual court to be placed within the broad salary register. Every employee of each individual court will have the ability to advance to the maximum salary within the individual court salary range for his or her own local trial court classification. In the example, a Courtroom Clerk from Court A would be able to advance to a maximum salary of \$23,320; a Courtroom Clerk from Court B would be able to advance to a maximum salary of \$24,275; and a

Courtroom Clerk from Court C would be able to advance to a maximum salary of \$28,046.

Concerns were raised that these broad ranges could put a cap on future negotiations. However, as indicated in item III of the model, the local salary ranges are subject to local salary range adjustments and to local personnel policies, procedures, and plans or meet and confer, where applicable. Adjustments made to local salaries as a result of changes to personnel policies, procedures, and plans or as the result of a meet and confer process may require an individual trial court's maximum salary range to move up the salary register. Likewise, the model allows the maximum of the salary register to increase to the level of the salary range in the highest-paying trial court. The model also accommodates the concern of the courts for flexibility in establishing and revising their own salary ranges based on local market and management needs.

After the local courts make changes to their local salary ranges, the Judicial Council would be responsible for documenting and updating the local salaries that make up the salary register. As stated earlier, the salary register created by the Judicial Council reflects actual salaries and does not set them. The task force recommends that the Judicial Council develop a process for maintaining, reviewing, and updating the broad salary registers to reflect any changes in local salary ranges.

**Impact for Employment Status Options: Salary**

The recommended salary model would essentially work the same under any of the employment status options of state, court, and county. Under each employment status option, the courts would be responsible for setting their individual salary ranges and for the impact of those salary ranges on their authorized budgets.

## **B. Meet and Confer**

### **Background**

The task force agreed that labor relations is an integral part of a personnel structure for trial court employees. The task force prepared a meet and confer model, which addresses labor relations in the trial courts. The meet and confer model generally defines trial court employees' and trial courts' rights and responsibilities with respect to labor relations.

### **Education: Meet and Confer**

The task force received education from Ms. Deborah Brown, Attorney, Administrative Office of the Courts regarding labor relations and the meet and confer process in the trial courts. The task force learned about the history of the meet and confer process in the trial courts and received general information about how the Meyers-Milias-Brown Act,<sup>30</sup> the Court Employee Labor Relations Rules,<sup>31</sup> and Assembly Bill 1438,<sup>32</sup> codified at Government Code sections 68650 through 68655, apply to the trial courts and trial court employees.

The task force learned that the Court Employee Labor Relations Rules were adopted in April 1997 and became effective January 1, 1998. The Court Employee Labor Relations Rules extend to trial court employees and the trial courts the right and the responsibility to meet and confer in good faith over matters the court has authority to determine. Government Code sections 68650 through 68655 (the labor relations statute) acknowledge the adoption of the rules and provide that they have the force of law, notwithstanding any other provision of law.

The task force received an overview and interpretation of the procedure for petitioning for relief for a violation of the labor relations statute or the Court Employee Labor Relations Rules under Government Code section 68654. Pursuant to section 68654, parties may petition the Court of Appeal for relief through a writ of mandate under Code of Civil Procedure section 1085. Currently, there are no specific procedures describing how the Court of Appeal would address such a petition.

The task force was provided with information regarding multiple-employer bargaining units. The task force learned that under current law, bargaining units may contain both court and county employees.

The task force also learned about labor relations in other public agencies. Representatives from the University of California, California State University, and California Department of Personnel Administration gave presentations to the task force regarding labor relations in their particular agencies.

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<sup>30</sup> Gov. Code, §§ 3500–3510.

<sup>31</sup> Cal. Rules of Court, rules 2201–2210.

<sup>32</sup> Escutia; Stats. 1997, ch. 857.

The task force was provided with general information regarding the four major public employment labor relations statutes in California: (1) the Higher Education Employer-Employee Relations Act (HEERA), which covers the University of California and the California State University and their employees; (2) the Dills Act (also known as the State Employer-Employee Relations Act, or SEERA), which covers the state executive branch and most of its employees; (3) the Educational Employment Relations Act (EERA), which covers the public schools (K–12) and community colleges and their employees; and (4) the Meyers-Milias-Brown Act (MMBA), which covers local government agencies and their employees.

**Assumptions and Objectives: Meet and Confer**

The task force did not adopt formal assumptions and objectives with respect to a meet and confer model for trial court employees.



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**Recommended Meet and Confer Model<sup>33</sup>**

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- I. Existing labor relations statutes and the Court Employee Labor Relations Rules of Court remain in place except for changes necessitated by a particular employment status option (state, county, court, or other) or changes related to the enforcement of the Court Employee Labor Relations Rules of Court.
- II. The meet and confer process for each court will be conducted on a local level.
- III. This meet and confer model does not apply to unrepresented employees.
- IV. Employer and representatives of recognized employee organizations shall be authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals.
- V. Unless otherwise agreed, employer and representatives of recognized employee organizations shall negotiate a single agreement for each bargaining unit.
- VI. The Labor Relations Statute, Government Code sections 68650 through 68655, will be amended to provide that:
  - A. If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a reference to make findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
  - B. The Judicial Council shall adopt a Rule of Court to provide a process for the Court of Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.
- VII. Nothing in this model precludes the establishment of mediation, arbitration, or other procedures through local personnel policies, procedures, and plans subject to meet and confer, as applicable.

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<sup>33</sup> As used in this model and other assumptions, objectives, and models of the task force, the meaning of the term *meet and confer* is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3) states, “Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

**Considerations: Meet and Confer**

The task force clarified the meaning of the term *meet and confer*, both as it is used in this model and in other assumptions, objectives, and models of the task force. For those purposes, the meaning of the term *meet and confer* is as defined in rule 2202(3) of the California Rules of Court. Rule 2202(3), which is part of the Court Employee Labor Relations Rules, states, “Meet and confer in good faith means that a court or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in this division, local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

The task force agreed that the existing Court Employee Labor Relations Rules<sup>34</sup> and the labor relations statute,<sup>35</sup> codified at Government Code sections 68650 through 68655, should remain in place and be changed only as necessitated by a particular status option or as they relate to the enforcement of the Court Employee Labor Relations Rules of Court.

The task force agreed to one particular modification to the labor relations statute with respect to the enforcement of the Court Employee Labor Relations Rules of Court. The task force was concerned that as currently drafted, the statute does not provide guidance to the appellate courts with respect to how a particular Court of Appeal would address a petition for relief under Government Code section 68654. More specifically, the task force addressed the following scenario: “If, on writ to the Court of Appeal, questions of fact exist, the court may order a referral to a retired judge or justice or a trial court judge. In this situation, who would take evidence and report findings on the disputed questions of fact, and what process would the Court of Appeal use to select the fact-finding referee or special master?” To address the task force’s concern that the affected trial court not be involved in the review of an alleged violation of the labor relations statute or the Court Employee Labor Relations Rules of Court, the task force agreed that the labor relations statute, Government Code sections 68650 through 68655, should be amended to provide the following:

- If a party petitions the Court of Appeal for relief as provided in Government Code section 68654 and the Court of Appeal orders a referral for the purpose of making findings of fact, the Court of Appeal may not appoint as a referee a judge or employee from the affected court; and
- The Judicial Council shall adopt a rule of court to provide a process for the Court of

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<sup>34</sup> Cal. Rules of Court, rules 2201–2210.

<sup>35</sup> Assem. Bill 1438 [Escutia]; Stats. 1997, ch. 857.

Appeal to use to select such a referee to take evidence and report findings on disputed questions of fact.

The model also clarifies that nothing in the model precludes the establishment of mediation, arbitration, or other procedures through local personnel policies, procedures, or plans subject to meet and confer, as applicable. For example, as set out above, although a party may petition the Court of Appeal for relief if it believes there has been a violation of the labor relations statute or the Court Employee Labor Relations Rules, there is nothing to prevent the parties from adopting alternative procedures as either preliminary steps to be taken before petitioning the Court of Appeal for relief or as a complete alternative to petitioning the Court of Appeal for relief.

The task force also agreed that the model did not need to address whether court and county employees may remain in the same bargaining unit. Rule 2206 of the California Rules of Court currently states, “Nothing contained in the rules of this division is intended to preclude court employees from continuing to be included in representation units which contain county employees.” The task force agreed that this rule need not be amended.

The task force recognized that the issue of involving the state as the funding source is an outstanding issue. The model itself does not address this issue, and the task force does not believe that it is the appropriate body to address this complicated policy issue.

### **Impact for Employment Status Options: Meet and Confer**

The meet and confer model applies equally under each employment status option. As indicated in item I of the model, the existing labor relations statute, Government Code sections 68650 through 68655, and the Court Employee Labor Relations Rules, rules 2201 through 2210 of the California Rules of Court, remain in place with the exception of any changes necessitated by a particular status option and the particular change referenced in item VI of the model related to the enforcement of the statute and rules.

Item IV of the model states that employer and representatives of recognized employee organizations are authorized to meet and confer and to reach tentative agreement regarding all subjects within the scope of representation on behalf of their respective principals. Under each trial court employee employment status option, the employer with whom representatives of recognized employee organizations meet and confer changes. Under the state employment status option, representatives of recognized employee organizations negotiate with the local trial court administration with the involvement of the state judicial branch. Under the court employment status option, representatives of recognized employee organizations negotiate with the local trial court administration. Under the county employment status option, representatives of recognized employee organizations negotiate with county and local trial court administrations.

In addition, under each trial court employee employment status option, the employer with

the final authority to determine economic and noneconomic benefits also changes. Under the state employment status option, the court, with the involvement of the state judicial branch, has the authority to determine economic and noneconomic benefits. Under the court employment status option, the court has the authority to determine economic and noneconomic benefits. Under the county employment status option, the county board of supervisors and the court jointly have the authority to determine economic and noneconomic benefits.

Under each trial court employee employment status option, the state determines the funding level of the courts. A concern was raised regarding the possibility of a situation in which negotiations between representatives of recognized employee organizations and the employer take place before the level of state funding is known. In this situation, a memorandum of understanding may be adopted that includes salary increases for local court employees when it is unknown whether the state ultimately will provide the funding for the salary increases. The task force concluded that an outstanding issue that eventually needs to be addressed in another forum is how to involve the state as the funding source in the meet and confer process under each of the trial court employee employment status options.

## C. Employment Protection System

### Background

The task force agreed that an employment protection system is an integral part of a personnel structure for trial court employees. As defined by the task force, an employment protection system is a system that defines and establishes for employees the scope of rights that pertain to their employment.

### Education: Employment Protection System

The task force received education from Ms. Deborah Brown, Attorney, Administrative Office of the Courts regarding the various types of employment protection systems that currently apply to trial court employees, as well as other systems applicable to state and local government employees.

In the process of learning about employment protection systems, the task force received education about the following:

- At-will employment;
- Employment that may be terminated for cause;
- Employer personnel policies and procedures;
- Merit systems;
- Civil service systems; and
- Collective bargaining, including meet and confer requirements.

During the course of discussing an employment protection system that includes a “cause” standard for discipline, the task force learned that a generally accepted definition of *cause* is “A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.”<sup>36</sup> The task force also received education regarding the consequences of a system that includes a cause standard for discipline up to and including termination, including the procedural due process protections that a public employee has under such a system. These procedural due process protections are discussed in more detail in the section “Considerations: Employment Protection System.”

In addition, the task force received information regarding the availability of a civil service system for court employees under state, court, and county employment status options. The task force learned that under the state judicial branch status option, the California Constitution, article VII, section 4, precludes trial court employees from inclusion in the state civil service system. Under the court employment status option, no civil service system specifically for the courts

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<sup>36</sup> *Pugh v. Sees Candies* (1981) 116 Cal.App. 3d 311, 330.

presently exists. If a civil service system were to be created under the court employment status option, the Legislature would need to approve statutory amendments. Under the county employment status option, county civil service systems currently are available in some, but not all, counties.

**Assumptions and Objectives: Employment Protection System**

The task force did not adopt formal assumptions and objectives with respect to an employment protection system for trial court employees. However, in the course of discussing alternative employment protection systems, the task force agreed to the following approach for an employment protection system for trial court employees:

- Aim for broad provisions;
- Achieve a system with statewide applicability;
- Achieve a system with local flexibility;
- Identify core elements and principles; and
- Provide the ability to organize at the local level.<sup>37</sup>

The task force also agreed that the model should consider potential disruption to trial courts and identify the employees to whom the model would apply.

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<sup>37</sup> Issues relating to the meet and confer process, including the ability to organize at a local level, are discussed in the section regarding the meet and confer model.

<b>Recommended Employment Protection System Model</b>
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- I. An employment protection system is legally available to the extent it is not excluded by the constitution. To the extent that the particular employment protection system proposed by the task force is precluded by statute, statutory amendments may be necessary.
- II. No changes are recommended to local systems, except that each local system shall include, but not be limited to, the following elements:
  - A. Employees may be laid off based on the organizational necessity<sup>38</sup> of the court. Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.<sup>39</sup>
  - B. The employee protection system shall include progressive discipline, as defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - C. *Employees*, as used in item II, means all employees other than:
    1. Subordinate judicial officers (for example, pro tem judges, commissioners, and referees, including referees appointed pursuant to California Code of Civil Procedure sections 638 and 639); and
    2. Managerial, confidential, temporary, limited-term, and probationary<sup>40</sup> employees, who may be excluded from this employment protection system in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.
  - D. This employment protection system shall not alter the fact that court employment is authorized and established by statute, and the termination of such employment shall not be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract, either implied or express. Unless modified through meet and confer or local trial court personnel policies, procedures, or plans, the procedure for any employee seeking a remedy who believes that the employing court has not complied with this employment protection system or who challenges the disciplinary decision shall be to first exhaust available administrative remedies provided by the employing court. In providing such administrative remedies, the employing court shall establish a lawful due process

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<sup>38</sup> A layoff for organizational necessity means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

<sup>39</sup> A generally accepted definition of *cause* is, "A fair and honest cause or reason, regulated by good faith on the part of the party exercising the power" (*Pugh v. Sees Candies* (1981) 116 Cal. App. 3d 311, 330).

<sup>40</sup> Probationary employees sometimes are referred to as introductory employees.

procedure to review disciplinary decisions that by law require a due process procedure. The lawful due process procedure shall be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable.<sup>41</sup> Any impartial hearing officer required by the lawful due process procedure in a postdeprivation due process hearing shall be appointed under procedures adopted through the meet and confer process, as applicable. At a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court. The denial of due process or disciplinary decisions that by law require a due process procedure may be challenged by a petition for a writ of mandate.

- III. Nothing herein shall preclude the provision of enhanced employment protection systems through meet and confer or local trial court personnel policies, procedures, or plans.
- IV. The employment protection system in each court shall go into effect on the effective date of the legislation that enacts a personnel system for trial court employees, or 90 days from the date that such legislation is chaptered, whichever is later, unless the employer and representatives of recognized employee organizations mutually agree to a different effective date.

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<sup>41</sup> Under the state and federal Constitution, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements. (See *Board of Regents v. Roth* (1972) 408 U.S. 564, 576–77; Cal. Const. art. I, § 7.) In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that at a minimum, preremoval safeguards must include: (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials on which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline. In addition to these preremoval safeguards, the employee also is entitled to a postdeprivation due process hearing, which can be given before or after the discipline or discharge is imposed. (See *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545–47.) In general, the following elements are typical in a postdeprivation due process hearing: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.



**Considerations: Employment Protection System**

The task force determined that it was necessary to establish a minimum employment protection standard for all trial court employees. The task force thus identified two core elements to be included in the employment protection system for trial court employees. First, discipline of trial court employees shall be for cause, with certain exceptions specified in the model. Second, the trial court employment protection system shall include progressive discipline.

The task force recognized that many court employees currently may have employment protection systems that include progressive discipline and a cause standard for discipline. However, in creating an employment protection system model, the task force determined that these core elements should be considered minimum standards for all trial court employees.

In creating the model, the task force considered that courts should maintain the authority to lay off employees based on the organizational necessity of the court. Thus, the model states, “Except for layoffs for organizational necessity, discipline up to and including termination of employees shall be for cause.” A layoff for organizational necessity is defined as “a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.”

The task force also discussed and resolved to whom the model should apply. Subordinate judicial officers are excluded from the employment protection model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did not define the terms *managerial*, *confidential*, *temporary*, *limited term*, and *probationary* but instead determined that those terms should be defined through local procedures, subject to meet and confer, as applicable.

By including a cause standard for discipline up to and including termination, the employment protection system model provides trial court employees with a property interest in their employment. Under the state and federal constitutions, a public employee who has a property interest in his or her employment may not be deprived of this property interest unless the employer complies with procedural due process requirements.

Thus, under the employment protection system model, the employer would be required to comply with procedural due process requirements. In *Skelly v. State Personnel Board*,<sup>42</sup> the California Supreme Court held that at a minimum,

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<sup>42</sup> *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215.

preremoval safeguards required by procedural due process must include (1) notice of the proposed action; (2) the reasons therefore; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing discipline.

In addition to these preremoval safeguards, employees also are entitled to postdeprivation due process rights in the form of an evidentiary hearing, which can be given before or after the discipline or discharge is imposed. In general, the following elements are typical in a postdeprivation due process proceeding: (1) the hearing should be at a meaningful time before an impartial hearing officer or decision maker; (2) during the hearing, the employee has the right to present favorable evidence, confront and cross-examine adverse witnesses, and be represented by counsel; and (3) the hearing results in findings of fact and conclusions that incorporate the evidence.

With respect to the evidentiary hearing required by procedural due process, the task force expressed concern that any impartial hearing officer required in a postdeprivation due process hearing be appointed through procedures adopted through the meet and confer process, as applicable. Where the meet and confer process is not applicable, the court must adopt local procedures to appoint such an impartial hearing officer. Regardless of the method of adoption of procedures to appoint such an impartial hearing officer, the model states that at a minimum, any such impartial hearing officer shall not be an employee or judge of the employing court.

Questions arose with respect to whether the impartial hearing officer's (or decision maker's) findings of fact and conclusions would be advisory to the employer or binding upon the employer. The task force concluded that with respect to this issue, the employer must comply with state and federal constitutional due process requirements, which currently permit the impartial hearing officer's findings of fact and conclusions of law to be either advisory to the employer or binding upon the employer. The task force, however, is still considering this issue and has not yet proposed a final recommendation with respect to the hearing officer's conclusions.

The task force also discussed the issue of when the employment protection system should go into effect. Members of the task force expressed a desire that the employment protection system go into effect as soon as reasonably possible. The task force considered that in those courts with a represented workforce, the employer and trial court employee representatives would need to meet and confer regarding the details of the employment protection system. For example, as referenced in item II.C.2 of the model, the employer and trial court employee representatives would need to meet and confer over the definition of managerial,

confidential, temporary, limited term, and probationary employees and whether they will be included or excluded from the employment protection system. Additionally, the employer and trial court employee representatives would need to meet and confer over the specifics of the lawful due process procedure described in item II.D. In deciding upon a reasonable amount of time for this process to take place, the task force considered the importance of this issue to the employees.

The task force determined that a reasonable amount of time for the employer to develop the details of the model, subject to meet and confer, would be approximately 90 days. Item IV of the model states that the employment protection system in each court shall go into effect on the effective date of the legislation that enacts a personnel system for trial court employees, or 90 days from the date that such legislation is chaptered, whichever is later, unless the employer and representatives of recognized employee organizations mutually agree to a different effective date. Therefore, for example, if the Governor signs legislation on October 6, 2000 (the chapter date is usually that day or the next day), that has an effective date of January 1, 2001, then the employer and trial court employee representatives will have until January 4, 2001, 90 days, in which to meet and confer over the details of the employment protection system. Alternatively, if the chapter date of the legislation is September 1, 2000, and the effective date of the legislation is January 1, 2001, then the employer and the trial court employee representatives will have until January 1, 2001, approximately 120 days, in which to meet and confer over the details of the employment protection system. Additionally, for represented workforces, the employer and representatives of recognized employee organizations may mutually agree to a different effective date for the employer protection system.

Another issue raised by the task force that is not specifically addressed in this model is the statutory rights that trial court employees currently have with respect to whistle blowing and retaliation by virtue of being considered county employees. The task force is concerned that trial court employees maintain the existing statutory protections with respect to whistle blowing and retaliation that currently apply to trial court employees as county employees. The task force agreed that, depending on which employment status the Legislature ultimately provides for trial court employees, statutory amendments may be required to maintain the statutory protections that currently apply to trial court employees as county employees with respect to whistle blowing and retaliation.

#### **Impact for Employment Status Options: Employment Protection System**

The employment protection system model applies equally under each employment status option. The employment protection system model addresses the issue of employment protection from a broad policy perspective by identifying the core elements of an employment protection system and leaving the details of the system

to the trial courts. By stating that "[n]o changes are recommended to existing systems, except that each local system shall include, but not be limited to, the [elements identified in the model]," the model proposes a floor, or minimum standard, which all trial courts must provide to the employees specified in the model. The model does not provide a ceiling for employee rights. Therefore, under this model, employees currently in at-will systems will be provided with the additional rights identified in the model. Existing employment protection systems that meet the minimum standards contained in the model and also offer more rights than those contained in the model will not be affected by the model to the extent that the existing systems are allowed by law.

The model states that court employment protection systems shall include progressive discipline. Under the model, progressive discipline will be defined by local trial court personnel policies, procedures, or plans, subject to meet and confer requirements, as applicable. Thus, those courts that currently do not have progressive discipline will be required to adopt a policy of progressive discipline.

The employment protection system model includes a cause standard for discipline up to and including termination. Those courts that currently do not have a cause standard for discipline, but instead have a system with fewer rights for employees (for example, an at-will system), at a minimum will be required to adopt a cause standard for discipline as set forth in the employment protection system model.

By including a cause standard for discipline up to and including termination, the employment protection system provides trial court employees with a property interest in their employment, which is protected by the due process clauses of the federal and state Constitutions. Thus, procedural due process rights would attach in such a system. If courts currently do not have lawful due process procedures for reviewing disciplinary decisions that by law require a due process procedure, they must establish them. Moreover, as specified in the model, the lawful due process procedure must include a procedure to appoint an impartial hearing officer in a postdeprivation due process hearing. This impartial hearing officer may not be an employee or judge of the employing court.

Subordinate judicial officers are excluded from the model. In addition, managerial, confidential, temporary, limited-term, and probationary employees may be excluded from the model in accordance with local trial court personnel policies, procedures, or plans, subject to meet and confer, as applicable. The task force did not define the terms *managerial*, *confidential*, *temporary*, *limited term*, or *probationary* but instead left the definitions of those terms up to local procedures, subject to meet and confer requirements, as applicable.

## D. Accrued Leave Benefits

### Background

The term *accrued leave benefits* as defined here may include: (1) accrual rates (how much leave time an employee earns in a given time period), (2) leave type (for example, vacation, sick leave, compensatory time off), and (3) the vested accrued leave benefits held by trial court employees. The task force has attempted to preserve employees' accrued leave benefits and to ensure that trial court employees maintain any rights related to accrued leave benefits, such as the ability to carry leave over from one year to another, to exchange leave credits for cash at the end of the year, and/or to apply leave credit to other benefits, including retirement and deferred compensation.

### Definition, Assumptions, and Objectives: Accrued Leave Benefits

In developing its accrued leave model, the task force used the following definition, assumptions, and objectives:

#### *Definition:*

*Accrued leave benefits* refer to leave time earned by trial court employees, such as vacation, sick leave, annual leave, personal holidays, and compensatory time off, which may have a cash-out value, may be carried over from one year to another, and/or may be applied to other benefits, including retirement and deferred compensation.<sup>43</sup> When the term *accrued leave benefits* is used in the assumptions, objectives, and model, it may include accrual rates, leave type (for example, vacation, sick leave, compensatory time off), and the vested accrued leave benefits held by trial court employees.

#### *Assumptions:*

1. Accrued annual leave, sick leave, compensatory time off, and vacation time are unfunded liabilities when they are carried over from one year to the next.
2. Determination of liability for leave balances accrued by court employees before implementation of the trial court employee personnel system is a policy issue that is outside the scope of the task force.
3. Employees may or may not receive cash for accrued leave and compensatory time off according to local personnel policies, procedures, and plans subject to memoranda of understanding in effect, where applicable.
4. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
5. The model assumes no changes to federal law.
6. Existing state law will require changes as a result of the implementation of the trial court employee personnel system.

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<sup>43</sup> For example, employees may be able to count unused sick leave as service credit for purposes of retirement or to convert unused leave credits to a contribution into a deferred compensation plan.

***Objectives:***

- A. The type and rate of accrued leave benefits, as well as policies related to accrued leave<sup>44</sup> in effect on the date of implementation, will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. Trial court employees will retain their vested accrued leave benefits upon implementation of the trial court employee personnel system.
- C. Implementation of the trial court employee personnel system will not force a cash-out liability for the court or the county.
- D. Upon implementation of the trial court employee personnel system, while existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same accrued leave benefits as provided under the memoranda of understanding.

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<sup>44</sup> Policies relating to accrued leave may include policies governing opportunities for employees to exchange unused leave credits for cash, carry over unused leave credits from one year to the next, and apply unused leave credits to other benefit programs.

<b>Recommended Accrued Leave Benefits Model</b>
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Upon implementation of the trial court employee personnel system:

- I. The type and rate of accrued leave benefits, as well as policies related to accrued leave in effect on the date of implementation, will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. Regardless of the employment status of trial court employees, employees will retain their vested accrued leave benefits upon implementation of the trial court employee personnel system. Employees may not cash out their accrued leave balances solely as a result of implementation of the trial court employee personnel system.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same type and accrual rate of, as well as policies relating to, accrued leave benefits as provided in the memoranda of understanding.
- IV. The type and accrual rate of, as well as policies relating to, accrued leave benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or revision of existing personnel policies, procedures, or plans.
- V. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court employment, neither the court nor the county will be forced to cash out trial court employees' accrued leave balances.

**Considerations: Accrued Leave Benefits**

In creating its model, the task force sought to preserve employees accrued leave benefits and to ensure that trial court employees maintain any rights related to accrued leave benefits. Item I of the model upholds the goal that, as a result of the implementation of the new trial court employee personnel system, trial court employees will experience no reduction in accrued leave benefits. Item I also states that any accrued leave rights that trial court employees currently enjoy, as defined in existing accrued leave policies, will not be diminished due to implementation of the new personnel system.

As stated in Item II of the model, regardless of their employment status, trial court employees will keep their vested accrued leave benefits when the trial court employee personnel system goes into effect. Also as indicated in item II of the model, at the time of transition, employees would not have the option of exchanging their accrued leave credits for cash simply because their employment status changed. In other words, if trial court employees were, for example, to change their employment status from county to court, these employees would carry over the full amount of their accrued leave benefits to the new employer.

Item III of the model states that for employees covered by memoranda of understanding, while memoranda of understanding remain in effect, those employees will continue to receive their accrued leave benefits, with type and rate remaining the same. Any accrued leave policies referenced in the memoranda of understanding will also continue to apply while these memoranda of understanding remain in effect.

Item IV of the model specifies that accrued leave benefits, as well as policies relating to these benefits, may be modified through the usual channels: that is, through the meet and confer process or through changes to existing personnel policies, procedures, or plans.

Item V of the model states that if as a result of the implementation of the trial court employee personnel system, trial court employees' employment status is state or court, neither the county nor the court will be forced to cash out trial court employees' accrued leave balances.

It remains to be determined which entity, the court or the county, will ultimately be responsible for funding any leave benefits accrued by trial court employees prior to the implementation of the trial court employee personnel system. In some counties, courts have already assumed fiscal responsibility for these carried-over accrued leave benefits. The issue of fiscal responsibility for leave benefits accumulated prior to transitioning to a new personnel system is a policy question that is outside the purview of the task force.

**Impact for Employment Status Options: Accrued Leave Benefits**

The accrued leave model is applicable equally under each employment status option. No matter what the employment status option—state, court, county, or other—trial court



employees will experience no change in the type and accrual rate of their accrued leave benefits as a result of the implementation of the trial court employee personnel system.

Each employment status option does, however, require that different transition issues be addressed to ensure a smooth implementation of the model. For example, if trial court employees become state or court employees, the court may need a mechanism for tracking trial court employees' accrued leave balances previously monitored by the county. If trial court employees' employment status is county, the counties may have to contend with the fact that some courts in their counties grant accrued leave benefits that differ from those granted by other county departments.

Whatever the transition issues, it is the goal of the task force to ensure that trial court employees' accrued leave benefits and related rights are not reduced as a result of implementation of the new trial court employee personnel system.

**E. Benefits: Group Insurance and Other Employer-Provided Benefits****Background**

The task force intends that trial court employees not lose the benefits they currently enjoy when they transition to the new personnel system. The task force recognizes that protecting benefits for trial court employees is crucial to meeting its charge that trial court employees' benefits should not be reduced.<sup>45</sup>

Trial court employees are offered a wide variety of benefits. With 58 different county systems, trial court systems vary greatly. The task force conducted a survey that requested information about trial court employees' benefits. The task force used information obtained from the survey in developing this model. Analysis of the survey data is still ongoing.

This model addresses the group insurance and other employer-provided benefits of current employees. It does not address other conditions of employment that have been addressed in the salary, classification, meet and confer, employment protection system, retirement, federally regulated benefits, deferred compensation, accrued leave, and transition models. Current employees are defined as those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system. (See Part II for a complete definition of trial court employee.)

The task force developed this model with the intent to protect trial court employees' benefits. A particular thoroughness was required by the task force to create a model that would maintain stability of benefits for trial court employees during the transition to a new personnel system.

**Education: Group Insurance and Other Employer-Provided Benefits**

The task force received education from Ms. Judith A. Myers, staff to the task force, regarding group insurance benefits and other employer-provided benefits applicable to trial court employees. Mr. Gregg Kenney, Manager in the Health Benefits Service Division of the California Public Employees' Retirement System (CalPERS), provided education on other benefit systems associated with state and local government employees and considerations and ramifications of plan design. Ms. Deborah Brown, staff attorney to the task force, provided education on the legal issues relating to group insurance and other employer-provided benefits.

**Definition, Assumptions, and Objectives: Group Insurance and Other Employer-Provided Benefits**

The task force used the following definitions, assumptions, and objectives in developing a recommended model for benefits:

***Definitions:***

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<sup>45</sup> Gov. Code, § 77605(d).

*Group Insurance Benefits*

The term *group insurance benefits* means insurance benefits that employers offer to employees, such as medical, dental, vision, disability, legal, life insurance, and other like benefits. Employers may obtain group insurance benefits through vendors or provide group insurance benefits directly through a self-insurance program. The *level of benefits* refers to the benefits received by employees under plan provisions, including co-payment levels and employee contributions.

*Other Employer-Provided Benefits*

The term *other employer-provided benefits* is defined as benefits provided by the employer, the cost of which may or may not be covered by the employer, excluding group insurance benefits (defined above), deferred compensation, and accrued leave benefits. Deferred compensation and accrued leave benefits are addressed separately. Other employer-provided benefits may be provided directly by the employer or through a third-party vendor. These benefits may include, but are not limited to, bus tokens, parking, transit passes, tuition reimbursement, car allowances, etc.

*Benefits*

The term *benefits* as used here does not refer to other conditions of employment that have been addressed in the salary, classification, meet and confer, employment protection system, retirement, federally regulated benefits, deferred compensation, accrued leave, and transition models.

***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes in current federal law.
3. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.
4. Benefits vendors are independent entities and may or may not be legally required to provide benefits to trial court employees, depending on trial court employees' employment status.

***Objectives:***

- A. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level<sup>46</sup> of benefits as provided under the memoranda of understanding.

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<sup>46</sup> *Same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means a comparable level of benefits.

- C. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees:
- 1) Provide for a transition period for all unrepresented trial court employees who are receiving benefits from one entity (county or court) to continue to receive benefits from the same entity;
  - 2) Provide a transition period to transfer responsibility for administration of benefits to the new employer;
  - 3) The successor employer shall provide, to the extent permitted by law, trial court employees with the same or comparable benefits; and
  - 4) The court and the county may mutually agree that the county will administer the payroll for trial court employees to facilitate court employee participation in county benefit plans, for which trial court employees may be eligible.

**Recommended Benefits Model For Implementation Of The Trial Court Employee Personnel System**

- I. As of the effective date of implementation of the trial court employee personnel system, the level of benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court employment, while existing memoranda of understanding remain in effect or for a period of 24 months, whichever is longer, represented trial court employees shall continue to receive the same level<sup>47</sup> of benefits as provided under the memoranda of understanding unless there is a mutual agreement to a change.
- III. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is county employment, while existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of benefits as provided under the memoranda of understanding. Benefits are subject to modification pursuant to the terms of memoranda of understanding or upon expiration of existing memoranda of understanding, subject to meet and confer.
- IV. Regardless of the employment status of trial court employees, unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures or plans as applicable.
- V. If, there is a change in responsibility for administering<sup>48</sup> benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in their benefit plans regardless of the employment status of trial court employees, as permitted by law or vendor.
- VI. The court or state, as the case may be, will reimburse the county for the cost of coverage of trial court employees in county benefit plans.
- VII. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *county* employment, the following provisions govern

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<sup>47</sup> For the purpose of this model, *same level* means the same benefits unless they are not permitted by law or vendor, in which case *same level* means a comparable level of benefits.

<sup>48</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

which entity will be responsible for administering the benefits:

- A. At the time of implementation of the trial court employee personnel system, if the county administers benefits, or if the court contracts with the county to administer benefits, the county shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
- B. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the following provisions govern the transition of responsibility for administration of these benefits to the county:
  - 1. While existing memoranda of understanding remain in effect<sup>49</sup> or for a period of up to 24 months, whichever is longer, courts will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the county that it no longer needs the court to administer specified benefits or the county and the court mutually agree that the court will no longer administer specified benefits.
  - 2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the courts will administer unrepresented trial court employees' benefits unless notified by the county that it no longer needs the court to administer specified benefits or the county and the court mutually agree that the court will no longer administer specified benefits. During this 24-month transition period, if the court intends to change the benefits for unrepresented trial court employees, the court shall provide the county with at least 60 days notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the county can decide whether to accept the court's change in benefits or consider alternatives to provide benefits on its own.
  - 3. If, during the 24-month transition period, the county decides to offer particular benefits that are different from what the court is administering, then the county will be responsible for administering those particular benefits.<sup>50</sup>
  - 4. If the county intends to give notice to the court that it no longer needs the court to provide specified benefits, the county shall provide the court with at least 60 days notice, or a mutually agreed to amount of notice.

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<sup>49</sup> For the purpose of this model, an existing memorandum of understanding shall remain in effect until, pursuant to the meet and confer process, the parties adopt a successor memorandum of understanding or until the parties reach an impasse and, pursuant to the meet and confer process and local procedures regarding impasse, the level of benefits is modified.

<sup>50</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

- VIII. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *state or court* employment, the following provisions govern which entity will be responsible for administering the benefits:
- A. At the time of implementation of the trial court employee personnel system, if the court administers benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
  - B. At the time of implementation of the trial court employee personnel system, if the county administers benefits or the court contracts with the county to administer benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:
    - 1. While existing memoranda of understanding remain in effect or for a period of up to 24 months, whichever is longer, counties will administer represented trial court employees' benefits as provided in the memoranda of understanding unless notified by the trial court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.
    - 2. For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer unrepresented trial court employees' benefits unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' benefits, the county shall provide the court with at least 60 days notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.
    - 3. If, during the 24-month transition period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits.<sup>51</sup>
    - 4. If the court intends to give notice to the county that it no longer needs the county to administer specified benefits, the court shall provide the county with at least 60 days notice, or a mutually agreed to amount of notice.
  - C. The court and the county may mutually agree that the county will administer

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<sup>51</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

the payroll for trial court employees to facilitate trial court employee participation in county benefit plans, for which trial court employees may be eligible.

- IX. This model does not exclude the possibility that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.



**Considerations: Group Insurance and Other Employer-Provided Benefits**

In developing the benefits model, the task force recognized the importance of addressing two major concerns. The first concern is ensuring the stability and protection of benefits for trial court employees upon transition. The second is recognizing the need to have a transition period that provides sufficient time for the successor employer to investigate and negotiate with third-party vendors or providers of new benefit programs and also provides sufficient time for the transfer of administrative responsibility.

Item I of the model ensures that, regardless of the employment status ultimately adopted, the benefits of current employees will not be reduced as a result of implementation of the trial court employee personnel system.

Item II of the model provides that if trial court employees' status is state or court, represented employees will continue to receive the same level of benefits as provided under the memoranda of understanding for the length of the memoranda of understanding or for a period of 24 months, whichever is longer, unless there is mutual agreement between recognized employee representatives and the court to change the level of benefits.

Item III of the model states that if trial court employees' status is county, while existing memoranda of understanding remain in effect, represented employees continue to receive the same level of benefits as provided by the memoranda of understanding. The benefits are subject to change upon expiration of existing memoranda of understanding or pursuant to the terms of memoranda of understanding.

Item IV states that, regardless of the employment status, unrepresented employees' benefits are subject to modification upon revision of existing personnel policies, procedures or plans, as applicable.

The benefits model presents more complicated administrative issues than other models recommended by the task force. This is so because the Trial Court Funding Act provided in Section 77212 that, beginning on July 1, 1998, the county may give the court notice that it will no longer furnish a specific service, or the court may give notice to the county that the court will no longer use a specific county service. The task force had to consider different scenarios for the administration of benefits that may be in place in different courts before the implementation of the trial court employee personnel system. Section 77212 of the Trial Court Funding Act provides that this severance of county services may occur as early as the first day of the succeeding fiscal year. If the court or the county exercises this option, it is possible that by the time a new personnel structure is implemented, the county may have transferred responsibility to the court for the administration of specific benefits.

The model addresses this issue by providing how benefits will be administered if either the court or the county is administering benefits at the time the trial court personnel structure is implemented. Item VII in the model addresses the situation in which, at the time of

implementation of the trial court employee personnel system, trial court employees' status is *county*. Item VII.A addresses the situation in which, at that time, the county is administering trial court employees' benefits. Item VII.B addresses the situation in which, at that time, the court is administering the benefits. Item VIII addresses the situation in which, at the time of implementation, trial court employees' status is *court* or *state*. Item VIII.A addresses the situation in which, at that time, the county is administering trial court employees' benefits. Item VIII.B addresses the situation in which, at that time, the county is administering trial court employees' benefits

Within this framework (in items VII and VIII), the model provides that the same entity will continue to administer benefits for 24 months or for the length of the memorandum of understanding. The purpose of this provision is to accommodate a smooth transition of administration of benefits if the responsibility for administration will be transferred from one entity to another due to trial court employees' ultimate status. The terms *administering*, *administration of*, and *administers*, as used in the model, mean that the entity contracts with a vendor or otherwise makes available particular benefits. These terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

Item VII addresses what will happen administratively if court employees' ultimate status is *county* employment. Item VII.A provides that, if the county administers benefits, or if the court contracts with the county to administer benefits, the benefits will continue to be administered by the county as provided under the existing personnel policies, procedures, and plans or trial court employee memoranda of understanding.

Item VII.B.1 provides that, if at the time of implementation of the trial court employee personnel system, the court administers benefits separately from the county, then the court will administer represented trial court employees' benefits for the length of the existing memoranda of understanding or for a period of up to 24 months, whichever is longer. This administrative responsibility could end earlier if the county notified the court that it no longer needed the court to administer benefits or if the county and the court mutually agreed that the court would no longer administer benefits.

Item VII.B.2 provides for a 24-month transition period after the implementation of the trial court employee personnel system. During this 24-month period, the courts will administer unrepresented trial court employees' benefits, unless the court is notified by the county that it no longer needs the court to administer the benefits or there is mutual agreement that the court will no longer administer the benefits. This item also provides that, if the court intends to change the benefits for unrepresented trial court employees, the court must provide the county with at least 60 days notice, or a mutually agreed to amount of notice, before the implementation of any change. This 60-day notice will allow time for the county to decide whether to accept the court's proposed change or to consider alternatives to provide benefits on its own.

Item VII.B.3 provides that if, during this 24-month transition period, the county decides to offer benefits that are different from what the court is administering, the county will be responsible for administering those benefits.

Item VII.B.4 states that the county must provide the court with at least 60 days notice, or a mutually agreed amount of notice, if the county intends to give the court notice that it no longer needs the court to provide specified benefits.

Item VIII addresses what will happen administratively if court employees' ultimate status is *court* or *state* employment. Item VIII.A provides that if, at the time of implementation of the trial court employee personnel system, the court administers benefits separately from the county, the court will continue to administer the benefits as provided under the existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.

If, at the time of implementation of the trial court employee personnel system, the county administers benefits or the court contracts with the county to administer the benefits, the county will administer the represented trial court employees' benefits for the length of the existing memoranda of understanding or for a period of up to 24 months, whichever is longer. This administrative responsibility could end earlier if the court notifies the county that it no longer needs the county to administer benefits or if the court and the county mutually agree that benefits will no longer be administered by the county.

Item VIII.B.2 provides for a 24-month transition period after implementation of the trial court employee personnel system. During this 24-month period, the county will administer unrepresented trial court employees' benefits, unless the county is notified by the court that it no longer needs the county to administer the benefits or there is mutual agreement that the county will no longer administer the benefits. This item also provides that, if the county intends to change the benefits for unrepresented trial court employees during this 24-month transition period, the county will provide at least 60 days notice, or a mutually agreed to amount of notice, before any change is implemented. This 60 days notice will allow time for the court to decide whether to accept the county's change or to consider alternatives to provide benefits on its own.

Item VIII.B.3 states that, if the court decides to offer different benefits from what the county is administering, then the court will be responsible for administering those benefits.

Item VIII.C. provides that a court and the county may mutually agree that the county will administer the payroll system for trial court employees to facilitate trial court employees' participation in a county benefit plan. If trial court employees' ultimate status is court employment, this provision accommodates the situation that may arise in which some counties may require trial court employees' paychecks to be issued from the county in order for employees to receive benefits from the county.

Item IX of the model states that, if court employees' ultimate status is court or state employment, the possibility exists that the courts may have a future option of participating in other group insurance benefit plans that may be developed subject to meet and confer.

**Impact for Employment Status Options: Group Insurance and Other Employer-Provided Benefits**

Under all status options, trial court employees' group insurance and other employer-provided benefits would not be reduced as a result of the implementation of the new personnel system.

Under the status option of county, represented employees would receive the same level of benefits as under existing memoranda of understanding, subject to meet and confer. Unrepresented employees would receive the same level of benefits, subject to modification upon revision of existing personnel policies, procedures, or plans, as applicable.

Under the employment status option of county, union representatives would negotiate with the county and the local trial court administration. Under this status option, the court might have less control over the types of benefits and costs of a particular negotiated benefit since the total number of court employees would be a small percentage of the total number of county employees.

Under the status options of court and state, represented employees would receive the same level of benefits as under existing memoranda of understanding or for a period of 24 months, whichever is longer. Once the 24-month period expires or the memorandum of understanding expires, whichever is later, represented employees would meet and confer regarding future benefits.

Under the employment status option of state, union representatives would negotiate with the local trial court administration with the involvement of the state judicial branch. For smaller courts and counties with less generous group insurance and employer-provided benefits, this could create pressure to ensure that future group insurance and other employer-provided benefits conform to state benefits if the benefits offered by the state are better than what the trial court employees are receiving.

Under the employment status option of court, union representatives would negotiate with the local trial court administration. If there is a wide disparity in the benefits offered by the court and the county, this could affect the ability of the court to attract or retain employees in the local market. This could create pressure to ensure that future group insurance and other employer-provided benefits conform to the benefits received by county employees.

If the employment status option is either state or court, the local trial court would be responsible for the administration of group insurance and other employer-provided benefits. In addition to the issue of local courts having responsibility for the administration of group

insurance and other employer-provided benefits and for contracting to provide these benefits, scale and volume may become a concern for small courts. For example, the cost of health insurance benefits for a small court could be higher than the current cost for the same employees under the current county health insurance benefit plan. Also, benefits are secured through contractual obligations, and although it is unlikely, a vendor could refuse to cover trial court employees as a result of a change in their employment status. In consideration of these issues, the model allows for the development of other group insurance benefit plans and for the opportunity for regional or statewide plans to be developed.

## **F. Federally Regulated Benefits**

### **Background**

Federally regulated benefits are benefits that provide tax-favored treatment for employees. The federal government, through the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities, governs the provisions of these benefits. Typically, federally regulated benefits are included in what are commonly called cafeteria plans, flexible benefit plans, or flexible spending arrangements. The portions of these plans that offer tax advantages and therefore are considered federally regulated benefits include flexible spending accounts covering health and dependent care under Code section 125, educational assistance benefits under Code section 127, and fringe benefits under Code section 132.

The task force conducted a survey of all trial court employee benefits. The results of the survey are currently being compiled and analyzed. Once analysis is complete, the task force will have information on all federally regulated benefits currently offered in the trial courts. Meanwhile, this discussion of federally regulated benefits addresses only the commonly offered Section 125 plans.

Section 125 plans allow the employee to pay pretax for such benefits as medical, dental, vision, disability, and life insurance. Flexible spending accounts for health or dependent care provide benefits by permitting employees to set aside amounts from their paychecks on a pretax basis over a 12-month period to cover medical payments not covered by insurance, such as deductible amounts and co-payments or dependent-care payments. Employees estimate eligible expenses during the coming year and contribute monthly to set aside the amount estimated. When expenses are incurred, employees submit claim forms and receive tax-free reimbursement for the covered expenses.

Both the employee and the employer incur risk in undertaking a health care flexible spending account. The employee must forfeit amounts of money left in the account at year's end. However, employees are entitled to use the full amount estimated for the year immediately. For example, if an employee contributes for only one month, incurs a covered health expense equal to the entire estimated amount, and then leaves employment, the employer must pay the full amount, even though the employee contributed only one month toward the total.

Employees incur some risk in participating in dependent-care flexible spending accounts because they forfeit unused contributions. The employer has no risk because eligible expenses are reimbursable only up to the amount contributed by the employee minus any amounts already reimbursed from the account to the employee.

Legally, only employees can participate in an employer's Section 125 plan. The determination of whether a person is an employee is governed by Internal Revenue Service standards. Therefore, if trial court employees were state or court employees after implementation of the new personnel system, they would not be able to participate in county Section 125 plans unless the court is a co-sponsor of the plan. If the court is a co-sponsor of the plan with the county, then trial court employees could remain in the county plan even though they are not county employees.

Trial court employees are currently participating in county federally regulated benefits programs that vary widely as to the benefits themselves as well as the plan year for those benefits. In the 58 counties, there are 27 have health care flexible spending accounts, and 39 have dependent-care flexible spending accounts. Some plan years coincide with the calendar year, some coincide with the fiscal year, and some begin on dates other than January 1 or July 1. Because of the risk to the employee and the employer described above, transition to a new employer on any date other than the first day of the plan year in each county could negatively affect either the employee or the employer. Transition during a plan year could result in employees forfeiting unused contributions and employers being unable to collect all of the employees' promised contributions to cover previous distributions.

In developing its federally regulated benefits assumptions, objectives, and model, the task force paid particular attention to avoiding any potential negative impact on employees or employers during the implementation of the new personnel system.

**Education: Federally Regulated Benefits**

The task force received education on federally regulated benefits and, in particular, Section 125 plans. Ms. Barbara McGeoch, an attorney with William M. Mercer, Inc., provided general education regarding Section 125 plans and discussed possible implementation strategies that would minimize or eliminate any negative impact on transition to a new employer.

**Definition, Assumptions, and Objectives: Federally Regulated Benefits**

The task force developed a definition, assumptions, and objectives as follows:

***Definition:***

Federally regulated employee benefits are benefits that often include tax-favored treatment for employees. Such arrangements are governed by the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities. Examples of federally regulated benefits include, but are not limited to, cafeteria plans under Code section 125, educational assistance benefits under Code section 127, and fringe benefits under Code section 132. Deferred

compensation benefits, which are also governed by federal law, are addressed in a separate model.

***Assumptions:***

1. Federal laws govern federally regulated benefits.
2. For the purposes of federally regulated benefits, trial court employees are currently considered county employees.
3. The Code provides that only employees may participate in an employer's Section 125 cafeteria plan.
4. The State of California requires an employee to be paid through the State Controller's Office in order to participate in the state's Section 125 plan.
5. If there is a transition to a new employer, under COBRA employees may retain access to amounts already contributed to their health care flexible spending account with the former employer.
6. The Code requires that employees participating in a Section 125 plan have immediate access to the full amount they contracted to contribute in a medical reimbursement account for the plan year. (For example, if the employee contributes for one month, spends the full year's reimbursement account, and leaves employment in the second month, the employer cannot receive any additional contributions from the former employee.)
7. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.

***Objectives:***

- A. The level of federally regulated benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level<sup>52</sup> of federally regulated benefits as provided under the memoranda of understanding.
- C. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, with respect to federally regulated benefits, to the extent permitted by law:
  - 1) The successor employer shall provide trial court employees with the same or comparable benefits;
  - 2) Trial court employees must retain access to dollar amounts already deposited with their former employer in federally regulated benefits accounts;
  - 3) The transition to a new employment status will not result in a financial liability for employees or new or former employers; and

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<sup>52</sup> For the purposes of this model, *same level* means the same federally regulated benefits unless they are not permitted by law or vendor, in which case *same level* means comparable level of federally regulated benefits.



- 4) The court and county may mutually agree that the county will administer the payroll for trial court employees to facilitate trial court employee participation in the county benefit plans, for which trial court employees may be eligible.

<b>Recommended Federally Regulated Benefits Model</b>
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- I. As of the effective date of implementation of the trial court employee personnel system, the level of federally regulated benefits provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. While existing memoranda of understanding remain in effect, represented trial court employees shall continue to receive the same level of federally regulated benefits as provided under the memoranda of understanding.
- III. Federally regulated benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.
- IV. If, upon implementation of the trial court employee personnel system, the entity that administers<sup>53</sup> the federally regulated benefit plan is not the employer of trial court employees, then an effective date for the transfer of responsibility for administering federally regulated benefits must be determined. This effective date must be established to coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.
- V. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *county* employment, the following provisions govern which entity will be responsible for administering the federally regulated benefits:
  - A. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the county shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
  - B. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the following provisions govern the transition of responsibility for administering these benefits to the county:

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<sup>53</sup> For the purpose of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs of these benefits.

1. Until the effective date of the transition, courts will administer represented trial court employees' federally regulated benefits as provided in the memoranda of understanding, subject to meet and confer.
  2. Until the effective date of transition, courts will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
  3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue so long as the trial court employees are governed by a plan not offered by the county, but in no event longer than 18 months unless the county and the court agree to continued co-sponsorship.
  4. If, during the co-sponsorship period, the county decides to offer particular benefits that are different from what the court is administering, then the county will be responsible for administering those particular benefits unless the court and the county agree to an alternative.<sup>54</sup>
- VI. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is *court* or *state* employment, the following provisions govern which entity will be responsible for administering the federally regulated benefits:
- A. At the time of implementation of the trial court employee personnel system, if the court administers federally regulated benefits separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding applicable to trial court employees.
  - B. At the time of implementation of the trial court employee personnel system, if the county administers federally regulated benefits, or if the court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the court:
    1. Until the effective date of the transition, counties will administer represented trial court employees' federally regulated benefits as provided in the memoranda of

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<sup>54</sup> The determination of authority to make changes to benefits, that is, county versus court authority, depends on the employment status recommended by the task force and will be addressed separately.

- understanding.
2. Until the effective date of the transition, counties will administer unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.
  3. To ensure that there is no financial impact on the employee or on either employer, during the period between implementation of the trial court employee personnel system and the effective date of the transition, both the court and the county will co-sponsor the federally regulated benefit plan. Co-sponsorship will continue so long as the trial court employees are governed by a plan not offered by the court, but in no event longer than 18 months unless the court and the county agree to continued co-sponsorship.
  4. If, during the co-sponsorship period, the court decides to offer particular benefits that are different from what the county is administering, then the court will be responsible for administering those particular benefits unless the court and the county agree to an alternative.<sup>55</sup>
- VII. To facilitate trial court employee participation in county benefit plans for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- VIII. The court or state, as the case may be, will reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefits plans.
- IX. This model does not exclude the possibility that the courts may have a future option of participating in other federally regulated benefit plans that may be developed subject to meet and confer.

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<sup>55</sup> The determination of authority to make changes to benefits, that is, county versus court authority, depends on the employment status recommended by the task force and will be addressed separately.

**Considerations: Federally Regulated Benefits**

The intent of this model is to protect those federally regulated benefits that trial court employees currently have, as well as ensure that there is no negative impact on either the employee or the employer if there is a transition to a new employer.

The task force considered several transition strategies that could be used to protect these benefits should a change in employer occur. These included: (1) select an implementation date that coincides with the first day of the new Section 125 plan year, (2) provide the employee with money in the new employer's Section 125 plan equivalent to the amount accumulated but not yet paid out to the employee from the former employer's plan, and (3) allow the employee to continue participation in the old employer's health care flexible spending account plan through COBRA (this option does not apply to dependent care).

All of these options require the employer to have a flexible spending account in place at the time of transition. The last two options require coordination between the former employer and the new employer to implement the transfer of the benefits.

The task force initially favored having the implementation date coincide with the first day of the plan year because this approach appeared to be the most easily understood and required no administrative coordination between the two employers. The task force asked the staff to obtain information from the survey of the trial courts conducted by Mercer to determine how many courts had Section 125 plans and what plan years were used. Currently, there are 27 health care flexible spending accounts, of which 18 use the calendar year, 3 use the fiscal year, and the rest use other plan years. There are 39 dependent-care flexible spending accounts, of which 28 use the calendar year, 5 use the fiscal year, and the rest use other plan years.

The task force ultimately rejected the concept of having the implementation date on the first day of the plan year because it could delay the implementation of the entire trial court personnel system. Subsequent to other research, the task force adopted an alternative that allows the court and the county to be co-sponsors of the federally regulated benefit plans until a transition between employers can be arranged on the first day of the plan year. Co-sponsorship would allow the employees to continue to participate in the old employer's plan until the new employer develops its own plan and would allow the co-sponsors to transfer responsibility for administering federally regulated benefits to the new employer effective on the first day of the applicable plan year.

The task force adopted a model that recommends that trial court employees retain their federally regulated benefits on transition to the new personnel system. Since

the plan years vary among the various courts, the task force recommended a model that accounts for varying transition dates if there is a transition to a new employer. To ensure that neither the employee nor the employer is disadvantaged by the transfer of responsibility for federally regulated benefits, the model specifies that:

- Responsibility for administering the benefits will transfer on the first day of the plan year; and
- Prior to that transfer date, the former employer and the new employer will be co-sponsors of the federally regulated benefit plans.

The model recognizes that the county may no longer be providing federally regulated benefits to the court when the new personnel system is implemented. The Trial Court Funding Act provides an opportunity for counties and courts to give notice to each other that they no longer wish to furnish or accept specific services. Therefore, the model accounts for a transition of federally regulated benefits from the court to the county as well as from the county to the court.

Since contributions to federally regulated benefit plans are typically deducted from payroll, the model provides that the court and the county may agree that the county will administer payroll for trial court employees to facilitate their participation in county benefit plans.

The model does not preclude the courts from having a future option to participate in other federally regulated benefit plans on a county, regional, or statewide basis.

### **Impact for Employment Status Options: Federally Regulated Benefits**

The task force considered the impact on trial court employees and on their employers of the federally regulated benefits model under each employment status option. Under all status options, the trial court employees' federally regulated benefits would not be reduced as a result of the implementation of the new personnel system. For all status options, the model also ensures that represented employees receive the same level of benefits for the life of their memoranda of understanding. The benefits are subject to change when memoranda of understanding are revised upon expiration or pursuant to the terms of the memoranda of understanding through the meet and confer process. Unrepresented employees receive the level of benefits provided in personnel policies, procedures, and plans, which are also subject to change.

Under the *county* employment status option, all trial court employees currently participating in county plans would remain in their local county federally regulated benefits plans. If the county were no longer providing this service to the court at the time of implementation, then the court would add the county to its plans as a co-sponsor and continue to administer the benefits. Administration of these

benefits would transition to the county, effective the first day of a new plan year.

Under the *court* or *state* employment status option, all trial court employees currently participating in court plans would remain in their local court federally regulated benefits plans. If the county were administering these benefits for court employees, then the county would add the court to its plans as a co-sponsor and continue to administer the benefits. Administration of these benefits would transition to the court, effective the first day of a new plan year.

The model does not specify that the transition to a new employer must occur on the first day of the next plan year because that date might not allow sufficient time for an orderly transition. Therefore, an 18-month transition period is provided, during which the co-sponsorship of the plan would continue until the transition to the new employer, effective on the first day of the subsequent plan year.

The task force considered whether trial court employees could participate in the state's Section 125 plan if they were to become state employees. However, the state requires that state employees receive a paycheck from the State Controller's Office in order to participate in the state's plan. State employees who do not receive a paycheck from the State Controller are not eligible to participate. Since these models assume local administration of the courts' payroll, participation in the state's federally regulated benefits plan was not an option for court employees. However, the model does not preclude the development of other federally regulated benefits plans for trial court employees to provide an opportunity for regional or statewide plans.

## **G. Deferred Compensation**

### **Background**

Deferred compensation plans are federally regulated plans that allow employees to save on a pretax basis. The most common types of deferred compensation plans are derived from Internal Revenue Code sections 401(k) and 457. The task force recognizes that deferred compensation plans are an important part of the retirement plans of the trial court employees who participate in them. These plans also serve as part of the compensation provided to some trial court employees in those counties where the employer contributes to the plan on behalf of the employee.

Deferred compensation 401(k) plans were available to governmental entities for only a brief period in the early 1980s. The plans were intended as profit-sharing plans, but the legislation creating them did not specifically exclude nonprofit employers such as governmental entities. In addition to employee contributions to 401(k) plans, employer contributions may also be made to these plans. In 1986, the federal government precluded nonprofit organizations from establishing any new plans. However, those employers that had established 401(k) plans were allowed to continue to offer the plans to new employees as well as establish new or additional 401(k) plans after 1986.

Deferred compensation 457 plans were established for employees of state and local governments and tax-exempt organizations. The money deposited in these plans is held in trust by the employer on behalf of participating employees. Typically, only employees contribute to these plans, but some plans include an employer contribution.

An employer may offer deferred compensation plans only to its own employees. The determination of who is an employee for deferred compensation purposes is governed by Internal Revenue Service standards. In this case, if there is a change in trial court employment status, the Internal Revenue Service may consider the trial courts to be successor employers of the county. This means that employees may continue to participate in county deferred compensation plans. If the courts were not determined to be successor employers of the counties or if a court as a successor employer wanted to establish a plan separate from the county, the court could establish a new comparable, non-401(k) deferred compensation plan.

If the trial court offers a comparable plan, the county may require the trial court employees to leave their plan balances in the county's deferred compensation plan, or the county may transfer trial court employees' plan balances to the trial court's deferred compensation plan.

If one employer replaces another (for example, through merger or reorganization)



and employees remain in the same jobs, a principle known as the “same desk rule” applies. Under this principle, there is no termination of service to cause a distribution of plan balances. Plan balances either remain in the former employer’s plan or are transferred to the new employer’s plan. This transfer may take place using a plan map. The plan map transfers the invested money to a comparable investment in the new plan. With a plan map transfer, the employee may have the option of making changes in the new investments either before the transfer or immediately after the transfer.

If balances are transferred from one employer’s deferred compensation plan to another employer’s plan, as dictated by particular contract provisions, deferred sales charges may be incurred as a result of the transfer. Deferred sales charges can be up to 5 percent of the employee’s assets in the plan and decrease with the number of years the employee has been in the plan.

Upon implementation of the trial court employee personnel system, to the extent possible, the task force intends to protect the investments that current employees have in their deferred compensation plans, ensures comparable investment opportunities, prevents employees from paying deferred sales charges, and preserves the opportunity to continue contributing to deferred compensation plans in those courts where they exist. The task force does not intend for its recommendations to affect any employer contribution programs that currently exist.

**Education: Deferred Compensation**

The task force received education regarding deferred compensation programs from Ms. Judith A. Myers, staff project leader of the task force. Mr. Keith Sendall of ICMA Retirement Corporation, a company that administers deferred compensation programs for governmental employers, and Mr. Drew James of William M. Mercer, Inc., consultant to the task force, were available at the meeting for consultation during the discussion. Ms. Deborah Brown, staff attorney to the task force, also provided education regarding the preservation of deferred compensation programs on transition from one employer to another.

**Definition, Assumptions, and Objectives: Deferred Compensation**

The task force subsequently developed a definition as well as assumptions and objectives.

***Definition:***

Deferred compensation plans are federally regulated plans that allow employees to save on a pretax basis. Deferred compensation plans are governed by the Internal Revenue Code (Code), Treasury Department regulations, and other Internal Revenue Service authorities. These savings can come from either employee or

employer contributions, or a combination of the two. The most common type of deferred compensation plans are eligible Code section 457 plans and qualified Code section 401(k) plans, referred to as 457 and 401(k) plans.

The 457 plans are those that for the 1999 tax year allow pretax contributions of up to \$8,000 or one-third of taxable pay, whichever is less. They also include a catch-up provision for additional contributions as an employee approaches retirement. Typically, only employees contribute to these plans, but some plans include an employer contribution.

The 401(k) plans are those that for the 1999 tax year allow an employee to contribute, pretax, up to \$10,000 or 25 percent of pay, whichever is less, to a retirement savings account. Employer contributions may also be made to 401(k) plans.

*Deferred compensation plan benefits* refers to the opportunity an employee may have to participate in deferred compensation plans, as well as to employer contributions to deferred compensation plans and investment options included in the plans.

***Assumptions:***

1. Federal laws govern deferred compensation plans.
2. Existing state law will require changes as a result of the implementation of the new trial court employee personnel system.
3. For purposes of deferred compensation, trial court employees are currently considered county employees.
4. State funding levels will not significantly increase as a result of the implementation of the trial court personnel system.
5. Governmental entities may establish 457 plans.
6. Governmental entities that did not have a 401(k) plan as of May 7, 1986, may not establish 401(k) plans.
7. Governmental entities that maintained a 401(k) plan before May 7, 1986, may continue to provide 401(k) plans to their employees and to employees of their successor entities.
8. For purposes of county-provided 401(k) and 457 plans, the IRS would consider the trial court employer to be a successor employer of the county. Thus, if court employees become employees of the trial court, they may continue to participate in county 401(k) and 457 deferred compensation plans.<sup>56</sup>

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<sup>56</sup> This assumption may require Internal Revenue Service private letter rulings and/or determination letters to confirm. Based on legal research and conversations with the Internal Revenue Service, most probably trial court employees may continue to receive deferred compensation plan benefits through county plans because courts would be considered related successor entities of the county with respect to judicial functions and trial court employment. Alternatively, the

9. Under the “same desk rule,” when one employer replaces another and employees retain the same jobs, for purposes of deferred compensation plan benefits, there is no termination of service to cause a distribution of plan balances. Thus, if court employees are offered deferred compensation plan benefits by a successor employer, counties may require that court employees leave their plan balances in the counties’ deferred compensation plans. In the alternative, counties may transfer trial court employees’ plan balances to the successor employer’s deferred compensation plans.
10. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees’ plan balances from county plans to the successor employer’s plans).

***Objectives:***

- A. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, the successor employer shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- C. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits<sup>57</sup> as provided under the memoranda of understanding.
- D. If the transition to a new employment status causes a change in deferred compensation plans and requires the transfer of court employees’ plan balances to a successor employer’s deferred compensation plans:
  - 1) Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - 2) Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court or state, as the case may be.
- E. If trial court employees become court or state employees, a transition period will be provided that permits the new employer to establish the same or comparable deferred compensation plans or provide for a method to permit court employees to remain in county deferred compensation plans.
- F. To facilitate trial court employee participation in county benefit plans for which trial court employees may be eligible, the court and county may

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court and the county may be considered to have such close ties that for purposes of deferred compensation plans that the Internal Revenue Service may consider them to be a single employer.

<sup>57</sup> “Same level of deferred compensation plan benefits” as used in the objectives and model means the same deferred compensation plan benefits, including the opportunity to participate in the plan, employer contributions, and investment options, unless they are not permitted by law or vendor, in which case “same level of deferred compensation plan benefits” means comparable level of deferred compensation plan benefits.

mutually agree that the county will administer the payroll for trial court employees.

<b>Recommended Deferred Compensation Model</b>
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- I. The level of deferred compensation plan benefits presently provided to trial court employees will not be reduced as a result of the implementation of the trial court employee personnel system.
- II. If the implementation of the trial court employee personnel system causes a change in the employment status of trial court employees, the successor employer shall provide trial court employees with the same or comparable deferred compensation plan benefits, to the extent permitted by law.
- III. While existing memoranda of understanding remain in effect, represented employees shall continue to receive the same level of deferred compensation plan benefits as provided under the memoranda of understanding.
- IV. If the transition to a new employment status causes a change in deferred compensation plans and requires the transfer of court employees' plan balances to a successor employer's deferred compensation plans:
  - A. Trial court employees will not suffer a financial loss due to transfer-related penalties, such as deferred sales charges; and
  - B. Any financial loss due to transfer-related penalties, such as deferred sales charges, will be borne by the court or state, as the case may be.
- V. If court employees become county employees, court employees shall continue to be eligible to receive deferred compensation plan benefits from the county.
- VI. If court employees become trial court or state employees, court employees shall continue to receive deferred compensation plan benefits from the county or court as follows:
  - A. For purposes of 401(k) plans:
    1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 401(k) deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or
    2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
      - a) Upon transition to the new deferred compensation

plan, to provide the successor employer time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and

- b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the successor employer's deferred compensation plan.

B. For purposes of 457 deferred compensation plans:

1. If permitted by federal law and deferred compensation plan vendors, employees may continue to receive 457 deferred compensation plan benefits through county plans unless or until the court modifies its plan benefits pursuant to local rules, policies, and procedures, subject to meet and confer, as applicable; or
2. The court may provide the same level of deferred compensation plan benefits developed subject to meet and confer, as applicable. In this case:
  - a) Upon transition to the new deferred compensation plan, to provide the successor employer time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which court employees may continue to receive deferred compensation plan benefits from the county; and
  - b) Upon transition to the new deferred compensation plan, counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer trial court employees' plan balances to the successor employer's deferred compensation plans.

VII. Deferred compensation plan benefits are subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or upon revision of existing personnel policies, procedures, or plans.

VIII. To facilitate trial court employee participation in county benefit plans for which they may be eligible, the court and county may mutually agree that

- the county will administer the payroll for trial court employees.
- IX. The court or state, as the case may be, will reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.
- X. County 401(k) and 457 plan documents may need to be amended to achieve the objectives of the model (for example, to permit court employees to remain in county plans or permit a transfer of court employees' plan balances from county plans to the successor employer's plans).
- XI. This model does not exclude the possibility that the courts may have a future option of participating in other deferred compensation plans that may be developed subject to meet and confer.

**Considerations: Deferred Compensation**

A task force intended to protect trial court employees' opportunity to participate in deferred compensation plans where they exist as well as ensure that trial court employees who have deferred compensation balances retain their balances in the same or comparable investments. A survey taken by the task force revealed that some counties offer 401(k) plans, some offer 457 plans, and some offer both. Other types of deferred compensation plans also are offered, such as 401(a) plans.

Preserving trial court employees' 401(k) plans requires particular attention since no new employers can establish plans if such plans were not in place by 1986. Those counties that established a 401(k) plan prior to 1986 have 401(k) plans in which trial court employees in those counties could continue to participate if court employees are county employees.

The state has a 401(k) plan for state employees and could create a new plan for trial court employees. With the state's agreement, trial court employees may be eligible to participate in a state plan if they become state employees and the local trial court pursues such an alternative, subject to meet and confer. But trial courts, as separate employers from the counties, do not have existing 401(k) plans. The task force questioned whether the courts could establish new 401(k) plans.

After seeking legal counsel from several sources, the task force determined that most probably trial court employees may continue to receive deferred compensation plan benefits through county plans because courts would be considered related successor entities of the county with respect to judicial functions and trial court employment. Alternatively, the court and the county may be considered to have such close ties that, for purposes of deferred compensation plans, the Internal Revenue Service may consider them to be a single employer. A definitive answer would require an IRS private letter ruling, which the task force is considering seeking, depending on the status option recommended. If the trial courts are found to be successor employers, then trial court employees who are court or state employees may continue to receive deferred compensation plan benefits through county 401(k) plans, or the court may be able to establish its own 401(k) plan. If the courts are not determined to be successor employers of the counties, or if a court as a successor employer wants to establish a plan separate from that of the county, the court could establish new comparable, non-401(k) deferred compensation plans.

The same rationale would apply to 457 deferred compensation plans. The state has a 457 plan or could create a new plan for trial court employees. With state agreement, trial court employees may be eligible to participate in a state plan if they become state employees and the local court pursues such an alternative, subject to meet and confer. If trial courts are found to be successor employers of



the counties, then trial court employees who are court or state employees may continue to receive deferred compensation plan benefits through county 457 plans, or the court could establish a new comparable deferred compensation plan.

The task force concluded that employees should not bear the cost of transfer-related penalties such as deferred sales charges if they are forced to move their plan balances from the county deferred compensation plan to a new plan. Therefore, the task force recommends that the court or state, as the case may be, should pay transfer-related penalties, if any.

**Impact for Employment Status Options: Deferred Compensation**

The task force considered the impact for trial court employees of the deferred compensation model under each employment status option. Under all status options, the trial court employees' deferred compensation plan benefits would not be reduced. As defined earlier, the deferred compensation plan benefits that would not be reduced include the opportunity an employee may have to participate in deferred compensation plans, to receive employer contributions to deferred compensation plans, and to choose among the investment options included in the plans.

For all status options, the model also ensures that employees receive the same level of benefits for the life of their memoranda of understanding, while recognizing that deferred compensation plan benefits are subject to change upon expiration of memoranda of understanding, upon modification pursuant to the terms of memoranda of understanding, or upon revision of personnel policies, procedures, or plans.

Under the county employment status option, all trial court employees would remain in their local county deferred compensation plans. Thus, employees in counties that offer a 457 plan would continue to have the opportunity to contribute to the 457 plan. Employees in counties with 401(k) plans would continue to have the opportunity to contribute to 401(k) plans. Those employees in counties that offer both plans would continue to have both plans available to them. Those employees with plans that permit an employer contribution or matching contribution would continue to have those employer contributions or matches available to them.

Under the state or court status option, as permitted by law or vendor, trial court employees could continue to participate in county 401(k) and 457 deferred compensation plans unless:

- The court chose to provide the same level of benefits on its own; or
- The court modified its plan benefits pursuant to local rules, policies, and

procedures, subject to meet and confer, as applicable.

If the court intends to provide its own deferred compensation plan either through modification of the county plan or by developing a plan of its own, a transition period of at least six months is provided to allow the court to establish its plan. Upon transition to a court plan, the counties may require that court employees leave their plan balances in the counties' deferred compensation plans or may transfer the balances to the successor employer's deferred compensation plan.

The model allows the possibility of development of other deferred compensation plans for trial court employees to provide an opportunity for regional or statewide plans.

## **H. Defined-Benefit Retirement Plan**

### **Background**

Defined-benefit retirement plans are those retirement plans with specific benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law. Defined-contribution retirement plans require a specific level of contribution but do not provide a specific benefit. This section focuses on defined-benefit retirement plans only; defined-contribution plans are discussed in the deferred compensation assumptions, objectives, and model in this report, in Part IV.G.

The task force recommends protecting the vested retirement benefits of current court employees in county defined-benefit retirement plans, and ensuring that employees do not lose the benefits and expectations they currently enjoy when they transition to the new personnel system.

Trial court employees are currently members of county defined-benefit retirement systems that vary greatly from county to county. These retirement systems include 1937 Act, Public Employees' Retirement System (CalPERS), and other public retirement systems. Not only do the benefits offered by the local systems vary, but some counties are covered by social security and others are not. Developing a retirement model that does not affect the benefits of current employees and does not affect social security contributions required particular attention.

The task force initially addressed only current trial court employees. Current employees are defined as those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system. Assumptions, objectives, and a model for defined-benefit retirement plans for current employees were included in the first interim report of the task force. Since then, the task force has also addressed employees hired after implementation of the new personnel system. The task force was opposed to a two-tiered retirement system that treated future employees differently from current employees and decided that future employees should be provided the same retirement system as current employees. The recommendations of the task force regarding future employees have been incorporated into the revised assumptions, objectives, and model in this section.

### **Education: Defined-Benefit Retirement Plan**

The task force first received education regarding retirement systems in general. Representatives from the California Public Employees Retirement System (CalPERS) provided general education about retirement systems and about CalPERS in particular. Also, task force member Mr. Robert Walton, Assistant Executive Officer, Governmental Affairs, and Mr. David Christianson, Legislative

Manager, Governmental Affairs, from CalPERS, provided expert advice. Contract actuarial consultant Mr. Drew James of William M. Mercer, Inc., responded to questions about current county retirement systems. As a result of this education, the task force determined that it needed answers to specific questions before pursuing assumptions, objectives, and a model for retirement systems. Some examples of the questions raised by the task force are:

- Is there a way to design a system that would allow court employees to maintain their current benefits regardless of employment status?
- If individual courts were to choose to be independent employers, with their own retirement systems, how could administrative costs be minimized for small courts?
- Could some court employees within a court elect to remain in their county retirement plan while other court employees in the same court choose a newly created plan?
- If current employees were to remain in county retirement systems while any new employees became members of a newly created system, what effect would this have on social security coverage?

These and other specific questions were drafted and sent to CalPERS and Mercer. The task force reviewed responses received from both entities.

The task force reviewed the statutes governing the conversion of employees from county employment to independent employment within the newly created County Offices of Education.<sup>58</sup> In that case, employees were allowed to choose to join the State Employee Retirement System or to remain in their county retirement systems. The decisions, once made, could not be rescinded. For those employees remaining in the county system, the same appropriations and transfers of funds were made to the retirement fund as required of the county under the county retirement law.

The task force also received education from Ms. Deborah Brown, staff attorney to the task force, regarding options for retaining the current social security contribution or noncontribution status for trial court employees. Additionally, the task force received education regarding the state judicial branch retirement system and regarding the social security system.

### **Assumptions and Objectives: Defined-Benefit Retirement Plan**

The task force subsequently developed assumptions and objectives as follows:

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<sup>58</sup> Educ. Code, § 1312–1313.

***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court personnel system.
2. The trial courts will exist as public agencies with the ability to contract for retirement benefits within the scope of the defined-benefit system.
3. The model assumes no changes in current federal law.
4. Existing state law regarding retirement provisions may require changes as a result of implementation of the trial court personnel system.
5. There will be no substantial financial impact on retirement systems and employee/employer contributions as a result of the implementation of the trial court personnel system.
6. Any successor retirement system will be a defined-benefit system. (This model will not address defined-contribution plans, which the task force will address separately.)
7. Any successor system will not assume any of the liabilities or assets of county retirement systems.
8. Social security is a tax. Whether an employee pays social security is determined by a variety of factors, including the employer's agreement with the social security administration.
9. For trial court employees in county retirement systems, the county is responsible for determining any plan design changes in the level of retirement benefits. The employer shall have the authority to determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.
10. If, as a result of implementation of the trial court employee personnel system, trial court employees' status is state or court, counties are not obligated to meet and confer with trial court employees' bargaining units regarding defined-benefit retirement plans.

***Objectives:***

- A. The retirement model will apply to current and future trial court employees.
- B. The level of retirement benefits of trial court employees will not be reduced as a result of the implementation of the trial court personnel system.
- C. If trial court employees become state or court employees, the trial court employees will have the right to continue to receive the same retirement plan design benefits as county employees.
- D. The employer shall determine the level of employer-paid member contributions through local trial court policies, procedures, or plans, subject to meet and confer, as applicable.
- E. The vested rights accrued by employees under their current retirement systems will be protected.
- F. Any successor defined-benefit system will provide for reciprocity with current county defined-benefit systems.

- G. To the extent permitted by law, social security contributions or noncontributions under current county retirement systems will not be modified by implementation of the trial court personnel system.
- H. To facilitate trial court employee participation in county defined-benefit retirement plans for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.

<b>Recommended Defined-Benefit Retirement Model</b>
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- I. If trial court employees become court or state employees, trial court employees will have the right to continue to receive the same retirement plan design benefits as county employees without the opportunity to meet and confer with the counties as to those benefits. Regardless of employment status, trial court employees will be eligible to participate in county defined-benefit retirement systems<sup>59</sup> and will be subject to county defined-benefit retirement system regulations and policies.
- II. For trial court employees who are members of a county retirement system, the same rate of contribution shall be paid by the state or court, as the case may be, to the county retirement system for each employee as the rate of contribution required of the county under the county retirement system.
- III. To the extent permitted by law, social security contributions or noncontributions of trial court employees will not be modified by implementation of the trial court personnel system.
- IV. To facilitate court employee participation in county defined-benefit retirement plans for which trial court employees may be eligible, the court and county may mutually agree that the county will administer the payroll for trial court employees.
- V. The model does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan or, if trial court employees become state employees, a state defined-benefit retirement plan.

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<sup>59</sup> *County retirement systems* in this model means 1937 Act, CalPERS, or independent retirement systems or plans.

**Considerations: Defined-Benefit Retirement Plan**

The model recognizes that, regardless of employment status, both current and future trial court employees will be eligible to participate in county retirement systems. However, since these county retirement systems are designed by the county and subject to meet and confer with county employees, if trial court employees are not county employees, they will not be in a position to meet and confer over plan benefits. They may, however meet and confer with the court over the level of employee contribution toward those benefits. The model ensures that the state or court will pay to the county retirement system the same rate of contribution per employee as the county pays for its employees. The model makes it clear that neither a new statewide plan nor development of new local retirement plans is precluded by the model.

This model ensures that, regardless of the employment status ultimately adopted, the retirement benefits of current employees are protected. This protection will require legislation similar to the statutes relating to the retirement status of employees of the County Offices of Education during their employment status transition. The California State Association of Counties has informed the task force that it will support the provision to allow trial court employees to participate in county defined-benefit retirement systems

This model will not increase current court, county, or state costs since current trial court employees are already in the county retirement systems. The cost impact of developing a new retirement system and allowing trial court employees a choice of retirement systems cannot be addressed until the actuarial calculations based on the results of the survey of trial court employees have been analyzed.

**Impact for Employment Status Options: Defined-Benefit Retirement Plan**

The task force also considered the impact of trial court employees' participation in county retirement plans under each employment status option. These effects are shown in Exhibit IV-1, at the end of this part.

The impact of trial court employees' participation in county retirement plans is the same under the state and court employment status options. The court, and ultimately the state, contribute to the county retirement system the total cost for each employee in the county retirement plan, including the employer contributions set by the retirement system, the member (employee) contributions, and the bargained employer-paid member contributions. The state or court deducts the member contribution from the employee's paycheck. The percentage of the employee contribution paid by the employer is subject to bargaining. Employees would receive the defined-benefit plan bargained by county employees. Employees also may have a future option to join a new defined-benefit retirement plan that may be developed subject to meet and confer.



Under the county employment status option, all court employees would participate in their local county retirement plans. The state or court would reimburse the county for the total cost for each employee, including the employer contribution, the member (employee) contribution, and any bargained employer-paid member contribution. The percentage of the employee contribution paid by the county would be subject to bargaining. The county would determine retirement plan benefits through local personnel policies and meet and confer processes, where applicable. The state or court would be required to fund the level of benefits established by the county.

As noted earlier, any analysis of the cost consequences of allowing current employees a choice of retirement systems has been postponed until the actuarial calculations based on results of the trial court employee survey have been analyzed.

In determining the impact of its proposed retirement model on current employees under each of the status options, a major consideration is whether or not employees would be covered by social security. The task force did not want its decisions to affect the current coverage levels. Currently, ten courts are not covered by social security, and their employees do not contribute to social security. The task force's recommendation to allow all trial court employees to continue to participate in county retirement plans ensures that existing social security coverage will not be affected. If, in the future, new local or statewide retirement systems are developed subject to meet and confer, their impact on social security coverage should be considered prior to implementation.

**Exhibit IV-1**  
**Working Impact of Trial Court Employees Participation in**  
**County Defined-Benefit Plans**

	Employment Status	
	STATE/COURT	COUNTY
<b>Employer Contribution<sup>60</sup></b>	– State/court pays the same employer contribution amount the retirement system requires the county to pay.	– Court pays the same employer contribution amount the retirement system requires the county to pay.
<b>Member (Employee) Contribution<sup>61</sup></b>	– State/court deducts employee contribution from paycheck. – State/court transfers funds to county retirement system.	– County deducts employee contribution from paycheck. County transfers funds to county retirement system.
<b>Employer-Paid Member (Employee) Contributions<sup>62</sup></b>	– Bargainable. – State/court pays any employer-paid member contributions to county retirement system.	– Bargainable. – Court pays any employer-paid member contributions to county retirement system.
<b>Plan Benefits</b>	– Shall be the same retirement benefits as provided to county employees.	– Shall be the same retirement benefits as provided to county employees.
<b>Bargaining Defined-Benefit Plan<sup>63</sup></b>	– Employees shall receive the defined-benefit plan bargained by county employees with the county. <sup>64</sup>	– Employees shall receive the defined-benefit plan bargained with the county.

<sup>60</sup> The amount an employer contributes to the plan.

<sup>61</sup> The amount an employee contributes to a plan on his or her behalf; contributions are generally made through a payroll deduction.

<sup>62</sup> Employees' contributions paid for by the employer.

<sup>63</sup> A retirement plan with benefits determined by a retirement formula based on years of service, age at retirement, and salary or final compensation, as defined by law.

<sup>64</sup> This does not exclude the possibility that trial court employees may have a future option of joining a new defined-benefit retirement plan that may be developed subject to meet and confer.

## **I. Retiree Group Insurance Benefits**

### **Background**

It is important to the task force that the group insurance benefits of those trial court employees who retire after implementation of the trial court employee personnel system not be affected as a result of the implementation of the new personnel system. To accomplish this, the task force recognized the necessity of protecting those benefits and providing for a transition period, if needed, to transfer responsibility for administration of group insurance benefits for retiring trial court employees to any successor employer.

Retiree group insurance benefits can include such benefits as medical, dental, vision, or other like benefits. Retiree group insurance benefits generally are unfunded liabilities. However, some counties use excess funding in their retirement systems to fund retiree group insurance benefits, and some counties may prefund retiree group insurance benefits.

The model developed by the task force applies to those individuals who meet the definition of a trial court employee at the time of implementation of the new personnel system and who retire after implementation of the new personnel system. The model does not apply to employees who retired before the date of implementation of the new trial court employee personnel system.

Within the 58 separate county systems, a wide variety of benefits, including retiree group insurance benefits, are offered to trial court employees. The task force obtained information about retiree group insurance benefits from a survey of trial court employees' benefits conducted earlier this year. Analysis of the survey data is still ongoing.

### **Education: Retiree Group Insurance Benefits**

The task force received education from Ms. Judith A. Myers, staff to the task force, regarding group insurance benefits applicable to trial court employees. Mr. Ken Marzion, Chief of the Actuarial and Employer Services Division, CalPERS, provided education and an overview of retiree health benefits offered through CalPERS. Mr. Steve Keil, Legislative Coordinator, California State Association of Counties, provided education about retiree group insurance benefits in 1937 Act counties and described the diverse funding mechanisms and arrangements among the county systems for retiree group insurance benefits, including excess earnings, unfunded liabilities, prefunding, and alternative funding provisions.

### **Assumptions and Objectives: Retiree Group Insurance Benefits**

The task force used the following assumptions and objectives in developing a recommended model for retiree group insurance benefits:

#### ***Assumptions:***

1. Implementation of the trial court employee personnel system may require changes in existing statutes.
2. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
3. This model assumes no changes in federal law.
4. In some counties, retiree group insurance benefits are unfunded liabilities; in some counties they are prefunded. Some counties use excess funding in their retirement systems to fund retiree group insurance benefits.
5. Determination of liability for such benefits for employees who have retired prior to implementation of the trial court personnel system is a policy issue that is outside the scope of the task force.
6. Retiree group insurance benefit plans are separate from defined-benefit retirement plans.
7. Retiree group insurance benefits for represented employees may be bargainable in the meet and confer process and may be changed upon expiration of memoranda of understanding or revision of personnel policies.
8. Group insurance benefits vendors are independent entities and may or may not be legally required to provide group insurance benefits to retired trial court employees.

***Objectives:***

- A. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.
- B. If there is a change in the employment status of trial court employees, the transition to a new employer will not have a significant financial impact on the new and former employers.
- C. The retiree group insurance model does not apply to employees who retired before the date of implementation of the new trial court employee personnel system.
- D. If retiree group insurance benefits are funded with an excess of funds in a county retirement system or prefunded by the county, the county shall provide the court with the same amount of funding for each trial court employee who retires as prefunded by the county for each county employee who retires.
- E. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>65</sup> of group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or upon revision of existing personnel policies, procedures or plans.
- F. Allow for a transition period to transfer responsibility for administration of group insurance benefits for retiring trial court employees to the employer.

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<sup>65</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<b>Recommended Retiree Group Insurance Benefits Model</b>
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- I. This model applies to active trial court employees on the date of implementation of the trial court employee personnel system who retire after implementation of the trial court employee personnel system; this model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.
- II. As of the effective date of implementation of the trial court employee personnel system, the level of retiree group insurance benefits provided to active trial court employees through memoranda of understanding or personnel policies will not be reduced as a result of the implementation of the trial court employee personnel system.<sup>66</sup>
- III. Upon implementation of the trial court employee personnel system, active trial court employees who retire shall receive the level<sup>67</sup> of retiree group insurance benefits provided under the personnel policies or memoranda of understanding, as applicable, subject to modification pursuant to the terms of memoranda of understanding, or upon expiration of existing memoranda of understanding subject to meet and confer, or upon revision of existing personnel policies, procedures or plans.
- IV. If there is a change in responsibility for administering<sup>68</sup> retiree group insurance benefits, a transition period for the transfer of responsibility is provided in this model. During this transition period, the county or the court may include trial court employees in their retiree group insurance benefit plans regardless of the employment status of trial court employees, as permitted by law or vendor.
- V. The court or state, as the case may be, will reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the court may agree to an alternative arrangement to administer and fund retiree group insurance benefits.
- VI. If, as a result of implementation of the trial court employee personnel system, trial

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<sup>66</sup> The determination of authority to make changes to benefits (that is, county versus court authority) depends on the employment status recommended by the task force and will be addressed separately.

<sup>67</sup> *Level* means the same retiree group insurance benefits unless they are not permitted by law or vendor, in which case *level* means comparable level of retiree group insurance benefits.

<sup>68</sup> For the purposes of this model, the terms *administering*, *administration of*, and *administers* mean that the entity either contracts with a vendor or otherwise makes available particular benefits; these terms do not, and are not intended to, indicate which entity is responsible for paying the costs for these benefits.

court employees' status is *county* employment, each county or county retirement system will continue to administer retiree group insurance benefits to retired trial court employees in the same manner and under the same conditions that it administers these benefits to other retired county employees.

- VII. If, as a result of implementation of the trial court employee personnel system, court employees' status is *court* or *state* employment, the following provisions govern which entity will be responsible for administering the retiree group insurance benefits:
- A. In those counties that fund retiree group insurance benefits from excess funds in their retirement systems or prefund retiree group insurance benefits, the county shall administer retiree group insurance benefits to trial court employees who retire from that county retirement system. The county and the court may agree to an alternative arrangement to administer retiree group insurance benefits.
  - B. In all counties not included in item VII.A:
    - 1. At the time of implementation of the trial court employee personnel system, if the court administers retiree group insurance benefits to trial court employees separately from the county, the court shall administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding.
    - 2. At the time of implementation of the trial court employee personnel system, if the county administers retiree group insurance benefits, or if the court contracts with the county to administer retiree group insurance benefits to trial court employees, the following provisions govern the transition of responsibility for administering these benefits to the court:
      - a) While existing memoranda of understanding remain in effect or for a transition period of up to 24 months, whichever is longer, counties will administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memoranda of understanding, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county mutually agree that the county will no longer administer specified benefits.
      - b) For a transition period of up to 24 months after implementation of the trial court employee personnel system, the counties will administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the court that it no longer needs the county to administer specified benefits or the court and the county

mutually agree that the county will no longer administer specified benefits. During this 24-month transition period, if the county intends to change unrepresented trial court employees' retiree group insurance benefits, the county shall provide the court with at least 60 days notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

- c) If, during the 24-month transition period, the court decides to offer particular retiree group insurance benefits that are different from what the county is administering, then the court will be responsible for administering those particular retiree group insurance benefits.
- d) If the court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the court shall provide the county with at least 60 days notice, or a mutually agreed to amount of notice.

VIII. This model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans for trial court employees that may be developed subject to meet and confer.

**Considerations: Retiree Group Insurance Benefits**

Stability and protection of benefits for trial court employees retiring after the implementation of the new personnel system and providing a sufficient transition period were important to the task force in developing their recommendations for the retiree group insurance benefits model.

Item I clarifies that the model applies to employees who are active trial court employees on the date of implementation of the trial court employee personnel system and who retire after implementation of the trial court employee personnel system. The model does not apply to trial court employees who retired before the implementation of the trial court employee personnel system.

Sections of the model protect trial court employees' retiree group insurance benefits at the time of implementation of the new system. Item II of the model provides that the level of retiree group insurance benefits provided to active trial court employees through either memoranda of understanding or personnel policies will not be reduced. Item III provides that while these existing personnel policies or memoranda of understanding are in effect, active trial court employees who retire will receive the same level of retiree group insurance benefits.

Item IV introduces the concept of a transition period, which is explained more fully in items VI and VII. Item IV provides that the court or the county may include, as permitted by law or vendor, trial court employees in its retiree group insurance benefit plans regardless of the employment status of trial court employees during this transition period.

The task force is aware that some retiree group insurance benefits are funded with an excess of funds in a county retirement system, and some counties prefund retiree group insurance benefits. Item V addresses the situation where a county funds retiree group insurance benefits. In those cases, the county may charge the court only the amount that the county is required to pay in excess of the retirement system funding or prefunding.

Items VI and VII explain how the transition would be different, if there is a change in employment status, depending on how retiree group insurance benefits are administered and funded. As used in the model, the terms *administering*, *administration of*, and *administers* mean that the entity contracts with a vendor or otherwise makes available particular benefits. These terms are not intended to indicate which entity is responsible for paying the costs for these benefits. Item VI recognizes that if the employment status is county, each county or county retirement system will continue to administer retiree group insurance benefits to retired court employees in the same way that these benefits are provided to other retired county employees.

Item VII.A states that if court or state is the employment status and the county funds retiree group insurance benefits from excess funds in its retirement system or prefunds retiree



group insurance benefits, the county will continue to provide these benefits to trial court employees who retire from the county system. As stated in item V, the court and county may also mutually agree to an alternative arrangement.

Pursuant to the Trial Court Funding Act, Government Code section 77212, as of July 1, 1998, Item VII.B.1 takes into consideration that counties and courts can notify each other that they no longer wish to furnish or accept specific services. This severance of services may be effective as early as the first day of the succeeding fiscal year. For example, the county may give notice to the court that it will no longer furnish a specific service, or the court may give notice to the county that the court no longer needs the county to provide a specific service. If the court or the county exercise this option, it is possible that by the time a new personnel structure is implemented, in some counties responsibility for retiree group insurance benefits may have been transferred from the county to the court.

Item VII.B.1 of the model provides for the situation in which the court is administering retiree group insurance benefits at the time the trial court personnel structure is implemented. In this event where the employment status is court or state, the court would continue to administer retiree group insurance benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding.

Item VII.B.2 of the model provides for a transition of responsibility for the administration of retiree group insurance benefits in the event that the county administers retiree group insurance benefits or the court contracts with the county for these benefits at the time the trial court personnel system is implemented. This transition provides that, for a period of 24 months or while existing memoranda of understanding are in effect, whichever is longer, the counties will continue to administer retiree group insurance benefits for represented employees who retire during that period, unless the court notifies the county that it no longer needs the county to administer the retiree group insurance benefits or there is mutual agreement that the county will not administer these benefits.

The model also provides a 24-month transition period for unrepresented trial court employees. During this time, the county will administer the benefits unless the court notifies the county that it no longer needs the county to administer these benefits or the county and the court mutually agree that the county will not administer benefits.

If the county intends to change unrepresented employees' retiree group insurance benefits within this 24-month transition period, the county must provide the court with at least 60 days notice, or a mutually agreed to amount of notice, before any change may be implemented. This 60-days notice will allow time for the court to decide whether to accept the county's change or to consider alternatives to provide retiree group insurance on its own. A 60 days notice is also required if the court intends to notify the county that it no longer needs the county to administer retiree group insurance benefits to trial court employees. The court and the county may also mutually agree to another amount of time.

During the 24-month transition period, if the employment status is court or state, the court is responsible for administering any retiree group insurance benefits the court decides to offer that are different from what the county is administering.

**Impact for Employment Status Options: Retiree Group Insurance Benefits**

For all status options, the model ensures that represented employees receive the same level of retiree group insurance benefits for the life of their memoranda of understanding. Retiree group insurance benefits are subject to change upon expiration of memoranda of understanding or pursuant to the terms of the memoranda of understanding, subject to meet and confer. Unrepresented employees receive the level of retiree group insurance benefits provided in personnel policies, procedures, and plans, which are also subject to change.

Retiree group insurance benefits are generally an unfunded liability. The determination of liability for such benefits for employees who have retired prior to implementation of the trial court personnel system is a policy issue that is outside the purview of the task force.

If the status of court employees is state or court employment, the model does not exclude the possibility that the courts may have a future option of participating in other retiree group insurance benefit plans that may be developed subject to meet and confer.

## **J. Transition Issues**

### **Background**

Many elements of the new trial court employee personnel system will require a transition period before they can become fully implemented. In each of the preceding personnel components, the task force addressed several transition issues within the models themselves. Many other transition issues, however, are outside the scope of these models and are thus included in this separate transition model.

In changing to the new trial court employee personnel system, many transition issues will be similar to those addressed in the transition to a unified court system. The unification transition provisions were established by Senate Bill 2139 and are codified in Government Code sections 70210 through 70219. In addition to addressing transition issues identified by the task force, the transition objectives and model that follow incorporate pertinent sections from the unification transition provisions. The objectives and model also refer to existing labor relations statutes and rules of court that will continue to apply to trial court employees.

At the time of publication of this second interim report, the task force was still deliberating a few outstanding transition issues. These issues are described in the section “Considerations: Transition” and should be resolved by the time the task force issues its final recommendations at the end of the year.

### **Assumptions and Objectives: Transition**

The task force used the following assumptions and objectives:

#### ***Assumptions:***

1. State funding levels will not significantly increase as a result of the implementation of the trial court employee personnel system.
2. The model assumes no changes in current federal law.
3. Existing state law will require changes as a result of implementation of the new trial court employee personnel system.

#### ***Objectives:***

- A. Trial court employees will not be affected negatively by the transition to the trial court employee personnel system.
- B. Existing memoranda of understanding remain in effect.
- C. The model will not affect the unification transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219).

<b>Recommended Transition Model</b>
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Upon implementation of the trial court employee personnel system:

- I. All current court employees who work for the court become the employees of the successor employer: state, court, county, or other.
- II. The terms of any memorandum of understanding shall remain in effect until the memorandum of understanding expires, is amended or replaced, subject to meet and confer. Upon expiration of memoranda of understanding, the successor employer<sup>69</sup> shall meet and confer with recognized court employee organizations.
- III. An employee organization that is recognized as a representative of a group of court employees or the exclusive representative of an established bargaining unit of court employees, either by the county or the court, shall be recognized by the successor employer as a representative or the exclusive representative of the same employees.
- IV. Unrepresented employees are governed by their employer's personnel policies, procedures, and plans. The transition to a new employer status shall not of itself be a basis for changing the employer's personnel policies, procedures, and plans except where otherwise required by the new trial court employee personnel system or by law. The successor employer retains previously existing rights with respect to revision of its personnel policies, procedures, and plans.
- V. Employment seniority of a court employee on the date of implementation of the trial court employee personnel system, as calculated under the predecessor's system, shall be counted toward seniority with the successor employer to the extent not prohibited by law.
- VI. The employment status of a court employee as a probationary, permanent, or regular employee shall remain in effect, and the employee shall be considered to have transferred to the successor employer with that status, so that probationary employees will not be required to serve a new probationary period but rather to complete the existing probationary period under the terms of hire to the extent not prohibited by law.
- VII. The classification and salary rate of a court employee shall remain in effect, and the employee shall be considered to have transferred to the successor employer at the same classification and salary rate to the extent not prohibited by law.

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<sup>69</sup> In relation to meet and confer, *successor employer* means the trial court, the trial court with the involvement of the state, or the trial court with the involvement of the county, as the case may be. See "Employment Status Definitions" in Part III of this report.

- VIII. Implementation of the trial court employee personnel system will not affect the transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) for purposes of unification.

**Considerations: Transition**

To facilitate the transition to the new trial court employee personnel system, the task force recommends in item I of the model that all trial court employees, regardless of whether their employment status is state, court, county, or other, be recognized as having become employees of a successor employer. Unless otherwise indicated in particular models, the transition model is not intended to affect the way the employer may modify employees' classification, salary, or other terms and conditions of employment.

Item II of the model states that memoranda of understanding in effect at the time of implementation of the trial court employee personnel system will remain in effect until their regularly scheduled expiration dates or until they are modified through the meet and confer process. When existing memoranda of understanding expire, if trial court employees' employment status is state, recognized court employee organizations will meet with the local trial court administration, with the involvement of the state judicial branch. If trial court employees' status is county, recognized court employee organizations will meet with the county and the local trial court administration. If trial court employees' employment status is court, then when existing memoranda of understanding expire, recognized court employee organizations will meet with the local trial court administration. (See Part IV.B, "Meet and Confer," for more specific information on the meet and confer process.)

Item III of the model clarifies that upon transition to the new trial court employee personnel system, the successor employer will continue to recognize any employee organization or exclusive representative previously recognized as representing trial court employees.

As explained in item IV of the model, unrepresented employees will continue to be governed by their employer's personnel policies, procedures, and plans, which are subject to change. The act of transitioning to a new personnel system will not in itself trigger changes to these personnel policies, procedures, and plans, unless expressly specified by the new personnel system or by law.

As stated in item V, trial court employees' seniority credits will transfer to the successor employer upon transition to the new personnel system. For example, if a trial court employee worked for the county for six years and then became a state employee, the state would recognize that employee as entering the system with six years seniority.

Similarly, item VI of the model provides that if a court employee held a certain status immediately prior to the transition, such as the status of probationary, permanent, or regular employee, then that employee would retain that same status upon transition. Thus, a probationary employee who had already completed 7 months of a 12-month probationary period would, at the time of transition, be credited with 7 months time for purposes of the probationary period.

Item VII of the model asserts that both the classification and salary rate of trial court

employees will remain in effect upon transition to a new personnel system.

Item VIII of the model reiterates that the unification transition provisions of Senate Bill 2139 (Government Code sections 70210 through 70219) will not be changed as a result of implementation of the trial court personnel system.

***Issues to Be Resolved:***

A few transition issues remain to be resolved by the task force. These issues include:

(1) time for the successor employer to implement a support structure, (2) employees' mobility rights, (3) transfer of disciplinary actions, and (4) union security (agency shop) continuation.

The first unresolved issue entails determining, if trial court employees become court or state employees, the amount of time needed by the successor employer to negotiate, create, and implement a support structure for the new trial court employee personnel system or to provide for a continued relationship with the county for this support structure. This support structure includes services covered in Rule 810 that are provided to the courts by the county.

The second transition issue still needing to be resolved concerns trial court employees' mobility rights between the county and the court, if there is a change to court or state employment status. These mobility rights between the county and the court cover such issues as transfer, displacement, and participation in promotional examinations.<sup>70</sup>

The third transition issue needing resolution relates to disciplinary action taken by the predecessor employer. It has been proposed that disciplinary action taken by the predecessor employer shall remain in effect upon transition to the new personnel system. This would mean that an employee on any level of discipline would be considered to have transferred to the successor employer with the disciplinary action and level remaining in effect. The key issue to be resolved is what to do if the former and successor employment protection systems differ.

The task force recently identified a fourth transition issue, namely the continuation of union security (agency shop) provisions. The task force concluded that the status of agency shops should not be affected by the transition to a new trial court employee personnel system.

These four outstanding transition issues will be resolved by the task force prior to the publication of its final report in December 1999. Additionally, once the task force makes its trial court employee employment status recommendation, the task force will revisit the transition model to determine whether any items need to be added, deleted, or modified.

**Impact for Employment Status Options: Transition**

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<sup>70</sup> Mobility rights such as transfer, displacement, and participation in promotional examinations may be defined in personnel rules and memoranda of understanding.

The transition model as drafted applies uniformly to all employment status options. If court employees remain county employees, however, the implementation time for the new trial court personnel system would logistically be shorter than under any other employment status option.



## PART V

### ADVISORY VOTE AND PUBLIC ENTITY POLL

#### Background

The Act mandates that the Task Force on Trial Court Employees “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.”<sup>71</sup> The statute did not specify who would take the vote or when the vote would be taken. As an initial objective, the task force chose to conduct the advisory vote of employees to help in the crafting of the final recommendations to the Legislature. Although not specified by the statute, the task force also decided to poll the preferences of the courts and the counties to assist in the formulation of the final recommendations. In the task force’s interim report published in May 1999, the task force outlined a process for an advisory vote of court employees regarding their employment status.

Prior to asking the trial court employees and public entities to vote on their preferences, it would be necessary for the task force to finalize all components of a personnel structure under each status option (county, court, state, or other). Due to the volume and complexity of issues that must be resolved prior to the final report, it became increasingly clear that the task force could not finalize decisions on these issues in time to complete the advisory vote and the public entity poll before releasing the final report in December 1999.

Since the statute did not charge the task force with actually conducting the advisory vote, the task force concluded that its paramount objective must be to produce its final report and recommendations by the end of 1999. After extensive discussions and careful consideration of all the options available, at the July 1999 meeting the task force voted without dissent not to conduct the advisory vote or public entity poll. The task force, however, determined that in accordance with the Act, it would “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county,”<sup>72</sup> as well as recommend a method for polling the trial courts and the counties.

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<sup>71</sup> Gov. Code, § 77603(h).

<sup>72</sup> *Ibid.*

**Assumptions and Objectives: Trial Court Employee Advisory Vote and Public Entity Poll**

The task force used the following assumptions and objectives in recommending a process for both the advisory vote of trial court employees and the public entity poll of court and county entities:

***Assumptions:***

1. As required by statute, the task force is to “prepare a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.”<sup>73</sup>
2. The Trial Court Funding Act requires agreement from the county and the courts in the county for county employment, and agreement from the state and the courts in the county for state employment; the vote must obtain information regarding second and third preferences.

***Objectives:***

- A. Prepare a method for obtaining information about employee preferences regarding employment status options, including second and third preferences.
- B. Prepare a method for obtaining information about counties’ and courts’ preferences and concerns regarding employment status options.
- C. Ensure that the method proposed provides education to employees, counties, and courts regarding the potential consequences of each status option.
- D. Ensure that the method proposed provides a neutral entity to administer the vote.

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<sup>73</sup> Gov. Code, § 77603(h).

**Recommended Method: Trial Court Employee Advisory Vote and Public Entity Poll**

As required by the Act, the task force has prepared the following recommended method for conducting an advisory vote:

***Advisory Vote:***

- I. Employees who meet the task force's definition of trial court employee will be eligible to participate in the trial court employee advisory vote.
- II. The employment status options as defined by the task force will be the status options used in the trial court employee advisory vote.
- III. Employees will be provided with educational materials that will provide explanations of the employment status options. These educational materials will first have been reviewed by the task force.
- IV. A neutral entity, such as the State Mediation and Conciliation Service, will administer the trial court employee advisory vote and tabulate the results.

***Public Entity Poll:***

- I. Individual counties and trial courts will be eligible to participate in the public entity poll. The poll will be submitted to the court administrator and the county administrative officer.
- II. The employment status options as defined by the task force in its final report will be the status options used in the public entity poll.
- III. Counties and trial courts will be provided with educational materials that will provide explanations of the employment status options. These educational materials will first have been reviewed by the task force.
- IV. The public entity poll will obtain information about the positions of the trial courts and counties with respect to the employment status of trial court employees. Each public entity's response will identify the public entity and be publicly available.
- V. A neutral entity, such as the State Mediation and Conciliation Service, will administer the public entity poll and tabulate the results.

**Considerations: Trial Court Employee Advisory Vote and Public Entity Poll**

In developing the process for the trial court employee advisory vote and public entity poll, the task force established the following goals: (1) have an independent third party conduct the vote; (2) ensure that every employee receives a ballot; and (3) guarantee the validity of the vote. To meet these three goals, the task force recommends that a neutral agency experienced in administering employee votes conduct, tabulate, and report the votes.

The task force recognizes that, for the advisory vote to be accurate and informative, the vote must be limited to those employees who would be included in the new trial court employee personnel system and whose status would be affected. It is necessary then to use the definition of *trial court employee* found in Part II of this report to determine which employees are eligible to participate in the advisory vote and which are not.

The task force recognized the importance of informing employees and public entities about the employment status options before asking them to indicate their preferences. The task force thus recommends undertaking an educational effort to clarify the impact of the employment status options for affected parties. In an attempt to make the most accurate educational materials available to trial court employees, the task force recommends that the task force have the opportunity to review any educational materials prior to distribution.

## PART VI

### TRIAL COURT EMPLOYEE SURVEY AND DOCUMENTATION

#### Background

The Act established the Task Force on Trial Court Employees and mandated that it complete the following tasks, as specified in the Act:<sup>74</sup>

- Complete a survey of trial court employee status, classification, and salary;
- Document local retirement systems and identify future retirement options;
- Determine costs of changes in retirement benefits, including the impact of change on pension obligation bonds, unfunded liabilities, actuarial assumptions, and costs to counties;
- Document existing contractual agreements and bargaining agents;
- Document existing constitutional, statutory, and other provisions relating to classification, compensation, and benefits of court employees; and
- Identify functions relating to trial courts that are provided by county employees.

#### Assumptions and Objectives: Trial Court Employee Survey

The task force's objectives in developing the Trial Court Employee Survey were to:

- Meet the statutory requirements of the Act;
- Document current personnel data;
- Obtain data to use as a foundation for recommendations; and
- Determine the baseline to use in anticipating the impact of any changes.

#### Education: Trial Court Employee Survey

The task force received education about the survey process and methodology from Mr. Drew James, an actuarial consultant with the firm of William M. Mercer, Inc. The consultant presented information about the content and structure of the survey and provided a summary of the survey questions related to classification, pay and benefits, memoranda of understanding, retirement, and employment status.

#### Pilot Testing

To determine ways to improve the survey instrument, the Trial Court Employee Survey was pilot tested in two urban courts, one suburban court, and two rural courts. The feedback, suggestions, and problems identified in the pilot test were addressed to the extent possible in the final survey sent to all trial courts.

#### Trial Court Employee Survey

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<sup>74</sup> Gov. Code, §§ 77600–77606.

The Administrative Office of the Courts (AOC), in conjunction with the task force, retained William M. Mercer, Inc. (Mercer), a consulting firm, to design the survey and conduct related analyses so that the task force will have access to the trial court employee information mandated by the Act.

The task force submitted the Trial Court Employee Survey to all trial court executive officers. For the task force to make appropriate recommendations, it is essential that the needs and interests of the entire court system, which includes approximately 18,000 trial court employees in 58 county systems, be considered. Among the courts, there are different classification systems, salaries, benefits, retirement systems, and memoranda of understanding. This state-mandated survey is the principal means by which the task force will obtain data about personnel and benefits systems currently in place in the trial courts.

The survey necessitated obtaining information about memoranda of understanding, retirement plans, benefits, salaries, and classifications. Much of this information resides in the 58 county personnel offices. The enormity and complexity of the questions resulted in a survey process that was time consuming and challenging for all trial courts to complete; analysis of this personnel information is ongoing.

The task force will use the survey data in making its final recommendations and will include results in its final report. The Act requires the task force to document local retirement systems and determine the costs associated with a change in retirement benefits;<sup>75</sup> the survey data will provide the information needed to perform these actuarial calculations.

After giving consideration and due weight to the final report of the task force, the Judicial Council will recommend to the Legislature a system of uniform court employee classifications. The Judicial Council is currently using the trial court employees' salary and classification data from the survey in anticipation of developing a system of uniform court employee classifications. The classifications will include duty statements, minimum qualifications, and salary ranges.<sup>76</sup> (See the salary and classification models recommended to the Judicial Council in Part IV.A, B).

### **Confidentiality**

Trial courts expressed concern about privacy and confidentiality of personnel information. The Administrative Office of the Courts and the consultant, Mercer, expressed their commitment to the trial courts to protect confidential survey information related to trial court employees. In addition, the use of social security numbers was not permitted in any part of the survey. Data regarding individual court

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<sup>75</sup> Gov. Code, § 77603(b–c).

<sup>76</sup> Gov. Code, § 77605(a).

employees will not be released.

**Survey Definition of Court Employee**

The Trial Court Employee Survey required that all information be completed based on the task force's definition of a trial court employee. (See Part II for the definition used in the survey.)

**Survey Reporting Date: June 30, 1998**

June 30, 1998, was the "snapshot" date all trial courts used in completing the survey questionnaire. The June 30, 1998 date was chosen unanimously by the task force because it was the last date for which the trial courts had complete fiscal year records at the time the survey was taken. The task force considered the complicating effect of unification and determined that this date was the most appropriate date for obtaining complete and accurate documentation from all trial courts. Trial courts were instructed in the survey to provide a cover letter explaining any significant or noteworthy changes that occurred after June 30, 1998. Examples of such changes include substantial salary increases, significant changes in job classification specifications, or changes resulting from a large classification study.

**Description of Survey Information**

The Trial Court Employee Survey requested information from trial courts about the following:

- Trial court employee bargaining units, memoranda of understanding, recognized bargaining agents, and unrepresented employees;
- Classification; salary; employment status; demographic information (for retirement purposes); and retirement benefits, funding, and administration of court employees;
- Medical, dental, vision, paid time off, long-term disability, life insurance, and other employer-provided benefits for active employees;
- Health and welfare benefits court employees would be entitled to when they retire;
- Deferred compensation plans, including 401(k) and 457 non-core retirement plans;
- Functions provided to the court by non-court employees (county employees, temporary agency employees, independent contractors, or others);
- Funded but vacant positions to ensure that all possible classifications are identified; and
- Aggregate information about specified non-court employees.

**Union Verification Process**

The task force wanted to provide each union or association that represents trial court employees the opportunity to review survey response data relating to the particular union's or association's memoranda of understanding. This information includes only

aggregate data, not individual employee information. In July 1999, parts of the survey containing information about represented employee groups and some general census data relating to employees of the particular union or association were provided to each union or association.

**Survey Addendum**

As a result of educational sessions with retirement and deferred compensation experts, the task force determined that an addendum to the survey was required to obtain additional, more comprehensive information about non-core retirement benefits such as 457, 401(k), and other non-core retirement plans. These plans are often referred to as deferred compensation plans. The original survey requested only general information regarding non-core retirement plans to which the employer contributed on behalf of the employee. The survey addendum requested more detailed information about the plans and information about all non-core retirement plans, whether or not the employer makes a contribution to the plan on behalf of the employee. The Addendum Survey requested information for each non-core retirement plan provided to court employees as of June 30, 1999, not as of the June 30, 1998, date used for the original Trial Court Employee Survey.

The articulated goal of the task force is to protect the benefits of current employees. To ensure that no trial court employee is negatively affected by any change in employment status, more detailed information about all non-core retirement plans is required, whether or not the employer provides a contribution. The information provided in response to the survey addendum will be critical to decisions the task force must make to ensure that no trial court employee is negatively affected by any change in employment status.

**Documentation of Provisions Relating to Trial Court Employee Classification, Compensation, and Benefits**

The Act states that one of the duties of the task force is to “[d]ocument existing constitutional, statutory, and other provisions relating to classification, compensation, and benefits of court employees.”<sup>77</sup>

To fulfill this mandate, staff to the task force is documenting existing constitutional provisions, statutes, California Rules of Court, and county charter provisions relating

to trial court employees’ classifications, compensation, and benefits. Documentation of such existing law will be included in the final report.

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<sup>77</sup> Gov. Code, § 77603(e).



## **PART VII**

### **INSTRUCTIONS FOR COMMENTS ON THE SECOND INTERIM REPORT OF THE TASK FORCE ON TRIAL COURT EMPLOYEES**

The Task Force on Trial Court Employees welcomes your comments on the second interim report and is circulating the report for comment to the counties, judiciary, Legislature, Governor, and local and state employee organizations, as required by the Act.<sup>78</sup> This comment process will give the task force a method for ensuring that the report receives proper consideration and input from interested parties.

The second interim report reflects the work of the task force to date. A final report will be issued in December 1999. Information in the second interim report may be subject to modification because of comments received. Your comments will make a valuable addition to the task force's duty to recommend a viable trial court employee personnel structure. The final recommendations of the task force become effective only upon subsequent action of the Legislature, as stated in Government Code section 77606.

This second interim report is also being posted to the task force's Web site at [www2.courtinfo.ca.gov/tcemployees](http://www2.courtinfo.ca.gov/tcemployees). Printing costs prevent the task force from distributing this report to all 18,000 trial court employees. However, the task force encourages court administrators and local employee representatives to make copies available to their employees and to inform them of the report's availability on the task force's Web site.

#### **Format for Comments**

Comments will be received via mail, fax, and e-mail. If your comment is directed at a specific part of the report, please cite the section and page number; if you are submitting general comments, please indicate relevant sections and page numbers as well.

Along with any comments, please provide your name, title, organization, address, phone number, and fax number so that we may confirm receipt of your comments and contact you with any questions or clarifications, as necessary.

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<sup>78</sup> Gov. Code, § 77604(c).

**Deadline for Submission of Comments**

The deadline for comments is 5 p.m. on Monday, November 1, 1999. Comments received after this deadline may not be considered by the task force. You may submit comments by mail and fax to:

Ms. Hazel Ann Reimche  
Task Force on Trial Court Employees  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102  
415-865-4328 (fax)

Please send e-mail comments to [tcemployees@courtnfo.ca.gov](mailto:tcemployees@courtnfo.ca.gov).